368 N.C.—No. 1 Pages 1-299

ADVANCE SHEETS

OF

CASES

ARGUED AND DETERMINED IN THE

SUPREME COURT

OF

NORTH CAROLINA

OCTOBER 16, 2015

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

THE SUPREME COURT
OF
NORTH CAROLINA

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[1] Appointed Chief Justice 18 August 2014; sworn in 1 September 2014. Elected Chief Justice 4 November 2014; sworn in 5 January 2015.
[2] Elected 4 November 2014; sworn in 1 January 2015.
[3] Retired 31 August 2014.
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[5] Retired 1 May 2015.
[6] Appointed 1 May 2015.

SUPREME COURT OF NORTH CAROLINA

CASES REPORTED

FILED 10 APRIL 2015, 11 JUNE 2015, 23 JULY 2015, AND 21 AUGUST 2015

ORDERS

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

HEADNOTE INDEX

APPEAL AND ERROR

Mootness—coal ash lagoons—superseding legislation—The Supreme Court considered whether the trial court erred by reversing a portion of a declaratory ruling issued by the North Carolina Environmental Management Commission (Commission) on 18 December 2012 relating to the application of the Commission's groundwater protection rules to coal ash lagoons. The General Assembly's enactment of Chapter 122 of the 2014 North Carolina Session Laws superseded the rule at issue with respect to coal ash lagoons located at facilities with active permits, and petitioners' appeal from the Commission's declaratory ruling was moot. **Cape Fear River Watch v. N.C. Envtl. Mgmt. Comm'n, 92.**

Preservation of issues—use of civil pleadings in criminal prosecution—objection required—The Court of Appeals erred in a prosecution for first-degree murder by determining that defendant was entitled to a new trial on the grounds that the admission of evidence concerning a wrongful death and declaratory judgment action and a child custody action violated N.C.G.S. § 1-149. That statute provides that pleadings cannot be used in a criminal prosecution against the party as proof of a fact admitted or alleged, but the N.C. Supreme Court has clearly indicated that a failure to object to the admission of evidence that allegedly violates N.C.G.S. § 1-149 results in a waiver of the right to challenge the admission of that evidence on appeal. **State v. Young, 188.**

Standard of review—jury instructions—plain error—Plain error was the correct standard of review in determining whether the trial court's instructions to a deadlocked jury were improperly coercive where the instructions were to the entire jury and defendant failed to object. *State v. Wilson*, 363 N.C. 478, relied on by defendant, was distinguished. Applying the plain error standard, the trial court's instructions did not result in an unconstitutional coercion. **State v. May, 112.**

ATTORNEYS

Application to take Bar exam denied—candor and truthfulness—pattern of omitting past criminal offenses—The denial of petitioner's application to stand for the July 2011 North Carolina Bar Examination was affirmed where the Board of Law Examiners (Board) concluded that petitioner "failed to carry her burden of proving she possesses the requisite general fitness and good moral character expected of attorneys licensed to practice law in North Carolina." The Board considered the evidence in the record as a whole and concluded that petitioner had demonstrated "a lack of candor and truthfulness" in that she had committed a substantial number of criminal offenses throughout the 1980s and 1990s; failed to disclose six criminal convictions on her law school application;

on their claim alleging that the Opportunity Scholarship Program violated Article IX, Section 2(1) of the North Carolina Constitution. The uniformity clause of Section 2(1) applies exclusively to the public school system and does not prohibit the General Assembly from funding educational initiatives outside of that system. **Hart v. State, 122.**

North Carolina—Article V, Sections 2(1) and 2(7)—Opportunity Scholarship Program—public purpose—The trial court erred by granting summary judgment in favor of plaintiff taxpayers on their claim alleging that the Opportunity Scholarship Program violated Article V, Sections 2(1) and 2(7) of the North Carolina Constitution. By providing lower-income families monetary assistance to procure additional educational opportunities, the Program involved a "reasonable connection with the convenience and necessity of the [State]" and benefitted the public generally. Therefore, the Program was for a public purpose under Sections 2(1) and 2(7). **Hart v. State, 122.**

North Carolina—Article I, Section 15—Opportunity Scholarship Program—sound basic education—The trial court erred by granting summary judgment in favor of plaintiff taxpayers on their claim alleging that the Opportunity Scholarship Program violated Article I, Section 15 of the North Carolina Constitution. Article I, Section 15 is not an independent basis for relief under the state constitution, and *Leandro v. State*, 346 N.C. 366 (1997), does not require the state to deliver a sound basic education outside of the public school system. The constitution envisions that children may be education outside of the public school system. **Hart v. State, 122.**

North Carolina—Article I, Section 19—Opportunity Scholarship Program—religious discrimination claim—standing—The trial court erred by granting summary judgment in favor of plaintiff taxpayers on their claim alleging that the Opportunity Scholarship Program violated Article I, Section 19 of the North Carolina Constitution. Plaintiffs' religious discrimination argument had no effect on the Court's analysis of the public purpose doctrine. Further, plaintiff taxpayers were not in the class of persons allegedly discriminated against by the Program, and they therefore lacked standing to make a standalone claim under Section 19. **Hart v. State, 122.**

CRIMINAL LAW

Deadlocked jury—instructions—no plain error—Where the trial court in three separate instructions repeatedly emphasized to deadlocked jurors the importance of their individual convictions, while giving instructions that substantially tracked the language of N.C.G.S. § 15A-1235(b), the court's instruction to continue deliberations for thirty minutes and the isolated mention of a retrial did not rise to the level of being so fundamentally erroneous as to constitute plain error. **State v. May, 112.**

DRUGS

Possession and transportation offenses—jury instructions—actual knowledge of identity of drugs—In defendant's trial resulting in his convictions for trafficking in at least 400 grams of cocaine by possession, trafficking in at least 400 grams of cocaine by transportation, and possession of cocaine with the intent to sell or deliver, the trial court did not err by failing to adequately instruct the jury that the State had to prove beyond a reasonable doubt that defendant actually knew that he had possessed and transported cocaine. Because defendant did not contend that he did not know the true identity of what he possessed, the trial court was not required

SCHEDULE FOR HEARING APPEALS DURING 2015

NORTH CAROLINA SUPREME COURT

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

January 12, 13
February 16, 24
March 16, 17, 18, 19
April 20, 21, 22
May 18, 19
June 30
August 31
September 1, 2
October 5, 6
November 16, 17
December 7

CASES

ARGUED AND DETERMINED IN THE

SUPREME COURT

OF

NORTH CAROLINA

AT

RALEIGH

STATE OF NORTH CAROLINA
v.
ADRIAN TAREL EPPS

No. 44A14

Filed 10 April 2015

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 752 S.E.2d 733 (2014), finding no error after appeal of a judgment entered on 25 September 2012 by Judge Hugh B. Lewis in Superior Court, Gaston County. Heard in the Supreme Court on 18 November 2014.

Roy Cooper, *Attorney General*, *by Amar Majmundar*, *Special Deputy Attorney General*, *for the State.*

Michael E. Casterline for defendant-appellant.

PER CURIAM.

AFFIRMED.

Justice ERVIN did not participate in the consideration or decision of this case.

STATE OF NORTH CAROLINA
v.
DANNY ROBBIE HEMBREE, JR.

No. 86A12

Filed 10 April 2015

Evidence—other crimes or bad acts—murder—photographs of burnt body—victim's good character—perjury

The trial court erred in a first-degree murder case by allowing admission of an excessive amount of the Saldana murder evidence under Rule 404(b), including more than a dozen photographs of her burnt body; by allowing a witness to testify about Saldana's good character; and by allowing the prosecution to argue without basis to the jury that defense counsel had in effect suborned perjury. The cumulative effect of the errors created sufficient prejudice to deny defendant a fair trial. Defendant's conviction and sentence were vacated and remanded for a new trial.

Justice ERVIN did not participate in the consideration or decision of this case.

Justice NEWBY dissenting.

Chief Justice MARTIN joins in dissenting opinion.

Appeal as of right pursuant to N.C.G.S. § 7A-27(a) from a judgment imposing a sentence of death entered by Judge Beverly T. Beal on 18 November 2011 in Superior Court, Gaston County, upon a jury verdict finding defendant guilty of first-degree murder. On 25 April 2013, while defendant's direct appeal was still pending, defendant filed a motion for appropriate relief with this Court pursuant to N.C.G.S. § 15A-1418. Heard in the Supreme Court on 14 October 2013.

Roy Cooper, Attorney General, by Robert C. Montgomery, Special Deputy Attorney General, and Derrick C. Mertz, Assistant Attorney General, for the State.

Marilyn G. Ozer and William F.W. Massengale for defendant-appellant.

HUDSON, Justice.

Defendant Danny Robbie Hembree, Jr. was indicted on 14 December 2009 for the first-degree murders of Heather Marie Catterton, Randi Dean Saldana, and Deborah Denise Ratchford. The trial court denied the State's motion to join the Catterton and Saldana trials and defendant was first tried capitally for the Catterton murder, which is the matter at issue in this appeal. On 8 November 2011, the jury found defendant guilty of first-degree murder. After a capital sentencing proceeding, the same jury found two aggravating circumstances, both statutory. The first was that defendant had previously been convicted of violent felonies; the second was that Catterton's death occurred during a "course of conduct" involving violence to others. Despite finding fourteen mitigating circumstances, the jury recommended, and the trial court entered, a sentence of death. Defendant now appeals his conviction and sentence to this Court as a matter of right.

Defendant contends that the cumulative effect of several errors in the proceedings below denied him a fair trial. We agree. "Although none of the trial court's errors, when considered in isolation, were necessarily sufficiently prejudicial to require a new trial, the cumulative effect of the errors created sufficient prejudice to deny defendant a fair trial." *State v. Canady*, 355 N.C. 242, 246, 559 S.E.2d 762, 764 (2002). Accordingly, we vacate the conviction and sentence and remand for a new trial.

FACTUAL BACKGROUND

Defendant spent the latter half of 17 October 2009 drinking alcohol and buying and smoking crack cocaine with Heather Catterton, Catterton's friend Sommer Heffner, and Heffner's boyfriend Michael Moore. At the time of her death, Heather Catterton was seventeen years old. Defendant was dating Heather's older sister, Nicole. Both Heather and Nicole had sex with men in order to obtain drugs.

In the late afternoon, defendant picked up Heffner and Moore outside a shop on Route 321 in Gastonia, North Carolina. After stopping at defendant's mother's house for approximately half an hour, the three continued to the house where Catterton lived with her father.

Eventually, the four left Catterton's house and drove in defendant's car to a store on Route 321. For the first of several times that evening, a dealer walked up to defendant's car and sold defendant crack cocaine through the opened car window. After the initial purchase was made, the group went to the trailer home of one of defendant's friends, where they all smoked defendant's cocaine. Over the next several hours, the four went from place to place purchasing and using more crack cocaine,

drinking alcohol, having sex, and searching for money for more drugs and alcohol.

Eventually, with defendant driving, the others left Moore, who was still heavily intoxicated, at a convenience store. The remaining three in the car—defendant, Catterton, and Heffner—then drove to a local neighborhood where defendant purchased yet more crack cocaine. Defendant dropped Heffner off at Moore's mother's house at approximately 1:00 a.m. on 18 October. Catterton stayed with defendant and was not seen alive again.

Catterton's body was found in a culvert in York County, South Carolina several days later on 29 October 2009, dressed in a sweatshirt and socks, but otherwise nude. The remainder of her clothing and a crack pipe were recovered nearby two days later.

Approximately two weeks later, on 15 November 2009, a second body was discovered on a dirt road in York County. Two women were riding horses near King's Mountain National Military Park when one of them saw a "burn spot" on the side of the road. As they investigated, one woman saw what she first believed was a mannequin, but soon found was a body. Her friend called the police, who later confirmed via DNA testing that this was the burned body of Randi Dean Saldana.

DEFENDANT'S CONFESSIONS

Late on 4 December 2009, defendant was arrested in Gaston County for a series of armed robberies. Over the next several hours on 5 December, defendant was interviewed by officers from both North and South Carolina. At least twice, defendant was given *Miranda* warnings and then stated that he was willing to answer questions from police. He confirmed repeatedly that he was not under the influence of drugs or alcohol. While at the police station, defendant was given food, soda, and coffee, and was allowed to rest. These interviews were recorded electronically, transcribed, and later presented to the jury in redacted form. Defendant also signed a written confession, reviewed that confession with police, and directed police where to make changes in the text. During these interviews, defendant confessed to several crimes, including the murders of Heather Catterton, Randi Saldana, and Deborah Ratchford.

Among other accounts, defendant told police that he killed Heather Catterton in his mother's laundry room at approximately 4:30 in the morning on 18 October 2009. According to these statements, after Heffner was gone, defendant told Catterton that "her lighter was out," but that he had more lighters in a cabinet in the basement, and if "she'd

come down there . . . we'd smoke some dope." He then followed her, used "some kind of cord" to strangle her from behind, and pulled her to the floor. Next he covered her mouth and nose with his hands "for like 10 or 15 minutes," then put a plastic Walmart bag over her face, and finally stood on her throat with his bare feet. Defendant told police that when these actions still failed to kill her, he punched her in the chest and her heart stopped beating.

Defendant stated that he then stored Catterton's body in a closet for several hours, until he disposed of it at approximately 6:00 p.m. that day. At that point, he wrapped the body in a blanket, drove it across the border to South Carolina, and dumped it near a creek along Robinson Yelton Road. Defendant said he later disposed of the blanket by throwing it in a dumpster and discarded the clothing by throwing it away near a creek. Defendant gave conflicting statements regarding his motive for the killing. At one point, he told police that he killed Heather Catterton for virtually no reason, but because he "[j]ust wanted to." At other times, he told them he killed her to help her escape a hard life that involved prostitution, beatings, and drugs.

During these same interviews, defendant also confessed to four other murders, two of which he said occurred in Florida. As for the other two homicides, defendant told police that he killed Randi Saldana several weeks after killing Catterton. In addition, defendant confessed to the August 1992 murder of Deborah Ratchford. Evidence about the Ratchford murder was not admitted at the Catterton trial.

Regarding the two women defendant claimed he killed in Florida, defendant refused throughout the interviews to provide details, but eventually did provide some information. Defendant told police that both women were white prostitutes, that he did not recall their names, and that their bodies were buried on Merritt Island in Brevard County. However, his statements about these murders conflicted regarding other important details. At one point, he told police that he committed the murders in 1992; at another, he said he killed them in 2009.

Four days later, on 9 December 2009, defendant recanted his confessions to the Ratchford murder and the two Florida murders. At trial, defendant also denied intentionally killing Catterton and Saldana.

PROCEDURAL HISTORY

Pretrial Proceedings

Defendant was indicted on 14 December 2009 for the murders of Heather Catterton, Randi Saldana, and Deborah Ratchford; he entered

pleas of not guilty. The State moved to join the Catterton and Saldana murders for trial, but the trial court denied this motion. Thus unable to try the two cases together, the State elected to try the Catterton murder first and sought to present evidence of the Saldana and Ratchford murders under Rule of Evidence 404(b).

The trial court conducted two hearings, one that started on 6 July 2011, and a second that started on 8 August 2011, to determine what evidence the State could present under this Rule. The July hearing focused on the forecast Saldana evidence. The trial court found several similarities between the Saldana and Catterton murders, including that both decedents were white females who engaged in prostitution, that both had died in defendant's mother's house within a "matter of weeks," that the physical evidence in both cases was consistent to show that both bodies were temporarily stored in defendant's mother's basement closet, and that defendant had disposed of both bodies in York County, South Carolina. Based on these factual similarities, the trial court concluded that much of the Saldana evidence could be presented under Rule 404(b) to show that defendant acted with a common plan, scheme, or design.[1] The trial court also rejected defendant's objection based on Rule of Evidence 403, and concluded that the probative value of the Saldana evidence would not be outweighed by the risks of unfair prejudice, delay, or confusion.

The August hearing focused on the evidence the State sought to present regarding the Ratchford murder. The trial court considered the State's forecast and found several important differences between the two cases, including the remoteness in time between the occurrences, the differences in the causes of death, the dissimilar alleged motives, and the role of a third party in Ratchford's death but not Catterton's. Based on these differences, the trial court concluded that evidence of the Ratchford murder was inadmissible under both Rule 404(b) and Rule 403.

Trial

Opening arguments at the trial for Heather Catterton's murder were delivered on 18 October 2011, and on the same day, the State began to present its case-in-chief. The State's first witnesses testified about the

1. The trial court specifically allowed the State to introduce several photographs showing Saldana's burnt body at the site where defendant had dumped it in South Carolina. The trial court did, however, exclude others on the basis that they were merely duplicative of those the State would be allowed to present.

discovery of Catterton's body and the events leading up to her death, and the State focused throughout the trial on the substance of defendant's confessions. By the second day of trial, however, over defendant's continuing objection, the State began also to focus heavily on evidence regarding the death of Randi Saldana. For example, on the second day of trial, a witness described finding the burnt body of Randi Saldana and testifying that it "felt like human flesh." The day after that, the State called Saldana's sister to testify about Saldana's good character and their close relationship. In all, the State presented twelve witnesses who testified about the Saldana death; this presentation spanned seven of the eight days on which the State presented evidence.

The State concedes that "[i]t is true that there was more evidence presented concerning the Saldana murder than there was for the murder of Heather Catterton—at least in part because there simply existed more evidence about the Saldana murder." The State argues that no authority prohibits it from "presenting Rule 404(b) evidence just because that evidence is worse for defendant than the evidence of the offense for which he is being tried."

Throughout the trial, the State presented at least sixteen photos of Randi Saldana, including more than a dozen photographs of Saldana's charred corpse. The trial court did, however, give repeated instructions to consider the Saldana evidence only insofar as it showed a common plan, scheme, or design involving both deaths.

The State also presented the testimony of medical experts. Anna Schandl, M.D., testified that she had conducted Catterton's autopsy, and that Catterton tested positive for an amount of cocaine which could potentially have been lethal. She also testified that there was no bruising or external trauma around Catterton's neck, but stated that this finding did not necessarily rule out defendant's account that he had strangled Catterton with a cord, pulled her to the floor, stood on her neck for several minutes, and suffocated her with a plastic bag. Ultimately, in her final autopsy report, Dr. Schandl indicated that the cause of Catterton's death was "undetermined."

In contrast with that of the Catterton experts, the testimony regarding the cause of Randi Saldana's death was more certain. The State's sole rebuttal witness was Nicholas Batalis, M.D., who conducted the autopsy on Randi Saldana and described the condition of Saldana's body in some detail, including multiple bruises on her neck and a fracture of her thyroid cartilage. In line with defendant's confession, Dr. Batalis concluded that Saldana had been killed by strangulation.

The defense evidence focused on discrediting the confessions defendant made on 5 December 2009 and then recanted. Defendant took the stand in his own defense to provide a different account of the night Catterton died. According to defendant, once Sommer Heffner left that evening, he and Catterton continued to smoke crack cocaine and have sex at his mother's house. Defendant claimed that they then went to bed, and Catterton was dead when he woke in the morning. Regarding Randi Saldana, he testified that he was performing oral sex on Saldana while squeezing her throat with one hand to intensify her orgasm. He claimed that her death accidentally resulted from his attempt at erotic asphyxiation.

Defendant also attempted to explain why he would falsely confess to multiple offenses, including several murders. Defendant testified that he had been arrested for a series of armed robberies, and that with his previous record, he could face a sentence of almost one hundred years. Defendant claimed that he believed confessing to the other offenses would grant him leverage with prosecutors on the robbery charges, but that he would not be convicted based on his (allegedly false) confessions once the police actually investigated his claims. In short, defendant testified that he falsely confessed in an attempt to "play[ ] the system."

The defense also presented evidence to contradict defendant's earlier claim that he had killed two women in Florida in either 1992 or 2009 and buried their bodies on Merritt Island. Detective Hensley testified that he relayed that information to authorities in Florida, who came to Gastonia to speak with defendant. A Florida detective testified, however, that no bodies were ever found at that location, that no unsolved murders matched the crimes defendant described, and that police were unable to verify many other details of defendant's statement.

Defense evidence also included the testimony of two medical experts regarding Catterton's cause of death. Forensic toxicologist Andrew Mason, Ph.D., testified that he had reviewed Catterton's toxicology reports and autopsy findings, and that the concentrations of cocaine and cocaine metabolites in her blood might have been, but were not necessarily, the cause of her death. In contrast, defense expert Donald Jason, M.D., a licensed medical doctor and associate professor, was the only expert at trial who offered a conclusion regarding the most likely cause of Heather Catterton's death. He reviewed the autopsy materials prepared by the State's expert, Dr. Schandl, and similarly concluded that Catterton's body had no significant bruises or wounds. He noted that Catterton "did not have any trauma that would be consistent with being cause of death" and concluded "that the most probable cause of death is cocaine toxicity."

Both the State and the defense offered closing arguments on 7 November 2011. The defense emphasized the lack of certainty regarding the cause of Heather Catterton's death and the inconsistencies between the physical evidence and defendant's 5 December 2009 statements to police. The State emphasized the substance of defendant's confessions, the fact that forensic evidence did not preclude defendant's claim that he had suffocated Catterton with a plastic shopping bag, defendant's history of manipulating others, and that two women, Catterton and Saldana, had been killed.

The next day, 8 November 2011, the jury found defendant guilty of first-degree murder. On 18 November, after a capital sentencing proceeding, the jury found two aggravating circumstances and fourteen mitigating circumstances, and recommended a sentence of death, which the court imposed. Defendant appealed to this Court.

ANALYSIS

Defendant argues that the trial court committed several errors, the cumulative effect of which deprived him of a fair trial. We agree. We hold that the trial court committed three errors: first, by allowing admission of an excessive amount of the Saldana murder evidence under Evidence Rule 404(b), including more than a dozen photographs of her burnt body; second, by allowing Saldana's sister, Shellie Nations, to testify about Saldana's good character; and third, by allowing the prosecution to argue without basis to the jury that defense counsel had in effect suborned perjury. In light of the cumulative effect of these three errors, "we are unable to conclude that defendant was not unfairly prejudiced." *State v. Rogers*, 355 N.C. 420, 465, 562 S.E.2d 859, 886 (2002) (citation omitted). Accordingly, we vacate the conviction and sentence, and remand to the trial court for a new trial.

The Saldana Evidence

Defendant argues that the trial court erred by admitting too much evidence of the Saldana murder, including evidence that showed only differences between the offenses, in violation of Rules of Evidence 404(b) and 403. Our standard of review for this issue contemplates a two-part inquiry:

> [W]hen analyzing rulings applying Rules 404(b) and 403, we conduct distinct inquiries with different standards of review. When the trial court has made findings of fact and conclusions of law to support its 404(b) ruling, as it did here, we look to whether the evidence supports the findings and

> whether the findings support the conclusions. We review de novo the legal conclusion that the evidence is, or is not, within the coverage of Rule 404(b). We then review the trial court's Rule 403 determination for abuse of discretion.

State v. Beckelheimer, 366 N.C. 127, 130, 726 S.E.2d 156, 159 (2012).

Rule 404(b) provides in relevant part that

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

N.C.G.S. § 8C-1, Rule 404(b) (2014). Because this Rule disallows the introduction of evidence only when the evidence would be used for a specific forbidden purpose, we have long described Rule 404(b) as a " 'general rule of inclusion.' " *State v. Al-Bayyinah*, 356 N.C. 150, 154, 567 S.E.2d 120, 122 (2002) (quoting *State v. Coffey*, 326 N.C. 268, 278, 389 S.E.2d 48, 54 (1990) (emphasis omitted)). In general, Rule 404(b) allows the admission of any evidence, " 'as long as it is relevant to any fact or issue other than the defendant's propensity to commit the crime.' " *Beckelheimer*, 366 N.C. at 130, 726 S.E.2d at 159 (quoting *State v. White*, 340 N.C. 264, 284, 457 S.E.2d 841, 852-53, *cert. denied*, 516 U.S. 994, 116 S. Ct. 530, 133 L. Ed. 2d 436 (1995)). However, this Rule is "constrained by the requirements of similarity and temporal proximity;" accordingly, while similarities between the charged crime and the 404(b) crime need not "rise to the level of the unique and bizarre," there must be "some unusual facts present in both crimes that would indicate that the same person committed them." *Id.* at 131, 726 S.E.2d at 159 (citations and internal quotation marks omitted).

Here, the trial court determined, and repeatedly instructed the jury, that the evidence of the Saldana murder could be considered only for the limited purpose of determining whether "there existed in the mind of the defendant a plan, scheme, system, or design involving the crime charged in this case," the Catterton murder. Therefore, under our standard of review, we must examine whether the findings of fact supported the legal conclusion to admit the evidence for this purpose, and whether those findings of fact were themselves supported by competent evidence.

At a two-day hearing conducted in July 2011, the trial court received evidence and heard arguments regarding the admissibility of the Saldana

evidence at trial. In addition to police reports, the trial court had before it the autopsy reports for Catterton and Saldana, as well as defendant's statements to the police. At the end of the hearing, the trial court made the following findings of fact orally:

> The defendant is charged in this case with the murder of Heather Catterton. This offense is alleged to have occurred on or about October 17th or 18th, 2009. The defendant made a statement to law enforcement officers on December 5, 2009 and made statements about this matter at various times and places from that date for several days thereafter. . . . The defendant's statements include multiple statements about the killing of Randi Saldana. The death of Randi Saldana is placed as having occurred on or about November 11, 2009, a matter of weeks after the homicide which is the subject of this case. In his . . . written statement, the defendant said, "I also killed Randi Saldana. I killed her because it was business. I was killing two birds with one stone."
>
> The physical evidence accumulated before and after the statement of the defendant is substantial. The killings occurred in the residence of the defendant. The physical evidence is consistent to show that the bodies of each of these women was temporarily placed in a cabinet or closet in the house in the basement area of [defendant's mother's house]. . . .
>
> Both bodies were subsequently removed by the defendant and taken to South Carolina and disposed of in remote locations and clothing of the two individuals was disposed of by being deposited in other remote locations. Both bodies were found at the same place at which the evidence tends to show the defendant placed or disposed of the bodies. The Catterton remains were found on October 29, 2009 in York County. The Saldana remains were found November 15, 2009 in York County. . . .
>
> Autopsies were conducted by the Medical University of South Carolina in each case. In regard to the Catterton autopsy, the cause of death was undetermined by the examining physicians and the manner of death was undetermined as reflected in that report. . . .

> In regard to the Saldana [case], that autopsy which was performed 11-17-09, results in a finding of [cause of] death of strangulation, manner of death homicide. Internal and external examination results are part of that report. Final diagnosis is strangulation. Fracture of the thyroid cartilage is indicated and soft tissue injury to the neck. The Saldana body was burned before it was discovered.
>
> The defendant described his actions in regard to the Catterton killing and her actions in the house. As to both he describes the drug use and the communal use of drugs by the defendant and each of the victims and others before the killings.
>
> . . . .
>
> As to the victims, they are both white females. They both apparently were prostitutes. Each of them was an acquaintance of the defendant, not a stranger. Both of them were acquaintances with whom he had shared sexual relationships and drug use along with others. In regard to what is involved, the what is the . . . homicide in both cases. . . .
>
> The proximity in time of these cases is close. It is not a temporal extended time, a matter of weeks. Why, in regard to motive, there does seem to be a similarity in regard to what the defendant says his reasons were and that was because of his contention they were having sex with black men. . . .
>
> The evidence apart from the autopsies is sufficient to show a method employed by the defendant. . . . Both would be manual violence as opposed to a blade or a firearm or a drowning. Both of them involve a manual killing. The similarities in the pattern of events on each occasion shows a plan or design.

Based on these findings, the trial court concluded that the evidence was admissible under Rule 404(b). The trial court emphasized: "I want to be clear about this. The same similarities and the method of disposing of the bodies and garments all show the plan, design and scheme aspect of this rule."

We hold that the trial court properly admitted evidence of the Saldana murder under Rule 404(b). Competent evidence—particularly

the autopsy reports and defendant's 5 December 2009 statement to the police—supported the trial court's oral findings of fact, and these findings of fact supported the trial court's conclusion that the Saldana evidence could be used to show a common plan or design. Because this evidence was probative of more than defendant's propensity to commit murder, namely that the Catterton murder was part of a common plan, design, or course of conduct, we conclude that Rule 404(b) did not preclude the admission of evidence concerning the Saldana murder.

This conclusion, however, is not the end of our inquiry. Though Rule 404(b) is a "general rule of inclusion," *Al-Bayyinah*, 356 N.C. at 154, 567 S.E.2d at 122, Rule 403 supplies an independent limitation on the ability of trial courts to admit evidence under that Rule. Rule 403 provides in full:

> Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

N.C.G.S. § 8C-1, Rule 403 (2014). Once a trial court has weighed the likely probative and prejudicial value of evidence a party has sought to admit over an objection, we review only for abuse of discretion. *Beckelheimer*, 366 N.C. at 130, 726 S.E.2d at 159. This standard is deferential, and we will disturb the trial court's decision only when it crosses the line from potentially reasoned to necessarily arbitrary. *See, e.g.*, *State v. Hyatt*, 355 N.C. 642, 662, 566 S.E.2d 61, 74-75 (2002), *cert. denied*, 537 U.S. 1133, 123 S. Ct. 916, 154 L. Ed. 2d 823 (2003).

In conducting this analysis, we note the particular dangers presented by Rule 404(b) evidence. The United States Supreme Court long ago described how such evidence can be misused, especially by allowing the jury to convict the accused for a crime not actually before it. *See Michelson v. United States*, 335 U.S. 469, 475-76, 69 S. Ct. 213, 218, 93 L. Ed. 168, 174 (1948) ("The inquiry [into character] is not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so overpersuade them as to prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge." (footnote omitted)). Our own, more recent decisions have recognized the same risks. *See, e.g.*, *State v. Carpenter*, 361 N.C. 382, 387-88, 646 S.E.2d 105, 109 (2007) ("When evidence of a prior crime is introduced, the natural and inevitable tendency for a judge or jury is to give excessive weight to the vicious record of crime thus exhibited

and either to allow it to bear too strongly on the present charge or to take the proof of it as justifying a condemnation, irrespective of the accused's guilt of the present charge." (citations and internal quotation marks omitted)). Accordingly, because of this " 'dangerous tendency . . . to mislead and raise a legally spurious presumption of guilt' " we have required that such evidence " 'be subjected to strict scrutiny by the courts.' " *Al-Bayyinah*, 356 N.C. at 154, 567 S.E.2d at 122 (quoting *State v. Johnson*, 317 N.C. 417, 430, 347 S.E.2d 7, 15 (1986)). Here, those dangers were particularly acute, and so our scrutiny in this capital case must be particularly careful.

Defendant does not argue that he was not present when Heather Catterton died, nor does he contest that he hid, then later disposed of, her body and that of Randi Saldana. The principal contested issue of fact at trial was the cause of Heather Catterton's death. None of the expert witnesses was able definitively to determine the cause of her death. None identified any internal or external trauma to Catterton's chest or neck; in contrast, three testified that her death may have resulted from cocaine toxicity. Indeed, one defense expert specifically concluded that Catterton "did not have any trauma that would be consistent with being [the] cause of death" and that "the most probable cause of death is cocaine toxicity." Given this forensic uncertainty, the Saldana evidence likely weighed heavily in the jury's deliberations.

We also note the nature and extent of the evidence presented concerning the Saldana murder. The State began to present this evidence on only the second day of the guilt-innocence phase of the trial and continued to present it on seven of the eight days it offered evidence, up to the day before closing arguments. In addition, because Saldana's body had been burned while Catterton's had not, much of this evidence concerned a key difference between the two deaths, rather than a similarity as anticipated under Rule 404(b). One of the State's first witnesses testified what it felt like to touch Saldana's body, and the jury viewed over a dozen photographs depicting Saldana's scorched remains. Our own review of the photographs confirms their stark and unsettling nature.

Our review has uncovered no North Carolina case in which it is clear that the State relied so extensively, both in its case-in-chief and in rebuttal, on Rule 404(b) evidence about a victim for whose murder the accused was not currently being tried. To the contrary, we have granted relief when the circumstances reveal a distinct risk that the jury may have been led to convict based on evidence of an offense not then before it. In *State v. Al-Bayyinah*, for example, we awarded a new trial in a capital case when Rule 404(b) evidence focused on earlier robberies "that

were factually dissimilar to the robbery and murder charged" in that case. 356 N.C. at 155, 567 S.E.2d at 123 (citing *State v. Lynch*, 334 N.C. 402, 412, 432 S.E.2d 349, 354 (1993)). *But see generally State v. Peterson*, 361 N.C. 587, 652 S.E.2d 216 (2007) (allowing a large amount of 404(b) evidence), *cert. denied*, 552 U.S. 1271, 128 S. Ct. 1682, 170 L. Ed. 2d 377 (2008); *State v. Stager*, 329 N.C. 278, 406 S.E.2d 876 (1991) (same). We have also identified cases addressing similar scenarios in other states, and we find them instructive.

Most similar is the 2000 decision in *Flowers v. State*, a capital case from Mississippi. *See generally* 773 So. 2d 309 (Miss. 2000). There, the defendant was on trial for one murder, although he had also been charged with three other homicides likely committed at the same time. *See id.* at 313. As here, a motion to consolidate the cases for trial was denied. *Id.* And, as here, the State sought to use Rule 404(b) to introduce copious evidence of the other three murders, including graphic photographic evidence, effectively proceeding as if the motion to try the offenses together had been allowed. *See id.* at 318-21. Based on this error, and its cumulative effect when considered with other errors, the Mississippi Supreme Court reversed the trial court's judgment and remanded for a new trial. *Id.* at 317, 334. In doing so, the appellate court remarked with palpable derision on the State's tactic of using evidence of an incendiary separate offense to arouse the passions of the jury:

> It is the "necessity" by the State to use the other evidence of three killings in order to tell a coherent story that is the key to its admissibility. The case at bar is not one of those cases so interconnected that mention of the other three murders is necessary to tell the whole story. Certainly it is not to the extent employed by the prosecution in the case at bar. Here, however, a pattern of trial tactic commenced at the beginning of trial and was continued by the prosecutor throughout the guilt phase of the proceedings including closing argument. If the evidence relating to the other three murders was relevant to any one of the acceptable purposes listed in Miss. R. Evid. 404(b), a description of the crime scene may have been helpful. However, the numerous additional descriptions of the other victims and photographs could do nothing but inflame the jury.

Id. at 324. If anything, the differences between Catterton's death and Saldana's death, and the lack of an obvious connection between the offenses, render the evidence of Saldana's death even less "necessary"

than the 404(b) evidence in *Flowers*. Accordingly, the concerns in Flowers about inflaming the jury pertain here as well.

In this context—in which Heather Catterton's cause of death was uncertain, and the Rule 404(b) evidence was so emotionally charged—we conclude that the decision to allow the State to present so much evidence about the Saldana murder stretched beyond the trial court's broad discretion. While the State possesses considerable leeway in presenting even "gory, gruesome, horrible or revolting" photographs of homicide victims, *State v. Chapman*, 359 N.C. 328, 350, 611 S.E.2d 794, 812 (2005) (citations and quotation marks omitted), that leeway ends where the additional photographs "add nothing in the way of probative value but tend solely to inflame the jurors," *State v. Roache*, 358 N.C. 243, 285, 595 S.E.2d 381, 409 (2004) (citations and quotation marks omitted). Accordingly, we hold that the trial court erred in allowing the admission of an excessive amount of evidence about Saldana, particularly photographic evidence, when the probative value of the sum total of that evidence was substantially outweighed by the risks that it would confuse the issues before the jury, or lead the jury to convict defendant based on evidence of a crime not actually before it.

Shellie Nations's Testimony

The second relevant error concerns the testimony of Randi Saldana's sister, Shellie Nations. More specifically, defendant argues that the trial court erred by allowing Nations to testify, over defendant's objection, about Randi Saldana's good character. Defendant contends that this testimony was inadmissible because it was irrelevant to the crime charged—the murder of Heather Catterton—and because any probative value the testimony might have had was substantially outweighed by the danger of unfair prejudice. We agree.

It is axiomatic that only relevant evidence is admissible at trial, while irrelevant evidence is inadmissible. *See*, *e.g.*, *State v. Berry*, 356 N.C. 490, 504, 573 S.E.2d 132, 143 (2002). Rule 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." N.C.G.S. § 8C-1, Rule 401 (2014). Evidence of a victim's character, or of the effect of the victim's death on others, is only rarely relevant when making a determination of guilt. *See State v. Maske*, 358 N.C. 40, 50, 591 S.E.2d 521, 528 (2004) ("[U]nless admissible under Rule 404(a)(2). . . . character evidence of a victim is usually irrelevant during the guilt-innocence portion of a capital trial, as is victim-impact evidence." (citing N.C. R.

Civ. P. 404(a)(2), *State v. Abraham*, 338 N.C. 315, 352-53, 451 S.E.2d 131, 151 (1994), and *State v. Oliver*, 309 N.C. 326, 360, 307 S.E.2d 304, 326 (1983))). It follows *a fortiori* that evidence concerning the character of a victim of a separate crime will be relevant in even fewer circumstances. Furthermore, even when evidence is admissible because it satisfies the low bar of logical relevance, that evidence must still be excluded when its probative value is substantially outweighed by the danger of unfair prejudice. N.C.G.S. § 8C-1, Rule 403. Here, the trial court admitted, over defendant's objection, Shelly Nations's testimony about Saldana's good character. Nations testified during direct examination as follows:

> [by the State] Q. Do you know someone or did you know someone by the name of Randi Saldana?
>
> A. Yes, ma'am.
>
> Q. And what was the relationship that you had with Miss Saldana?
>
> A. That was my sister.
>
> Q. Was she a younger sister or was an older sister?
>
> A. She was a year younger.
>
> Q. A year younger? Describe what Randi was like.
>
> A. She was very free spirit, charismatic. She had a heart of gold.
>
> [Defense counsel]: I'm going to object, your Honor. [The trial court then overruled the objection but offered a limiting instruction.]
>
> . . . .
>
> [by the State] Q. Okay. You indicated that she was charismatic and had a heart of gold.
>
> A. Yeah. Randi, she was the type of person if you asked her for something and you needed it, the way we were raised is you gave it, you know, and you gave it with good intentions. She never really wanted to hurt anyone with the intentions of hurting them, you know. She was the type of person if she knew that—if she had known that she had hurt your feelings, she would come back and she would freely apologize and admit to her wrong in that, you know, for the most part. Randi and I were raised

> together our whole lives and I can't even count on one hand the arguments my sister and I had. She was just the type of person, she would express her feelings, and, you know, she just—she was a good person.

We hold that the trial court erred by allowing this testimony. It is difficult to discern any probative value that testimony about Randi Saldana's good character could have had to the issue of whether defendant caused the death of Heather Catterton. *See Abraham*, 338 N.C. at 352-53, 451 S.E.2d at 151 (" 'Character evidence is of slight probative value and may be very prejudicial. It tends to distract the trier of fact from the main question of what actually happened on the particular occasion. It subtly permits the trier of fact to reward the good man and to punish the bad man because of their respective characters despite what the evidence in the case shows actually happened.' " (quoting N.C. R. Evid. 404 official commentary)). The State appears to concede this point and argues instead that any error was harmless because "[t]he bottom line is that there is little likelihood that Nations' testimony concerning Saldana's character made any difference in this case whatsoever." In light of this complete lack of relevance, we hold that the trial court should not have allowed this evidence over defendant's objection based on Rule 403.

Improper Statements Made During the State's Closing Argument

The third relevant error concerns statements made by the State during closing arguments at the guilt-innocence phase of the trial. More specifically, defendant argues that the State made multiple improper statements, including several that impermissibly accused defense counsel of suborning perjury. We agree.

During closing arguments, prosecutors are barred by statute from "becom[ing] abusive, inject[ing their] personal experiences, [and] express[ing their] personal belief as to the truth or falsity of the evidence or as to the guilt or innocence of the defendant." N.C.G.S. § 15A-1230 (2014). Within those confines, however, we have long recognized that " 'generally, prosecutors are given wide latitude in the scope of their argument and may argue to the jury the law, the facts in evidence, and all reasonable inferences drawn therefrom.' " *State v. Phillips*, 365 N.C. 103, 135, 711 S.E.2d 122, 145 (2011) (brackets omitted) (quoting *State v. Goss*, 361 N.C. 610, 626, 651 S.E.2d 867, 877 (2007), *cert. denied*, 555 U.S. 835, 129 S. Ct. 59, 172 L. Ed. 2d 58 (2008)) (internal quotation marks omitted), *cert. denied*, __ U.S. __, 132 S. Ct. 1541, 182 L. Ed. 2d 176 (2012). This latitude is reflected in our deferential standards of review. When opposing counsel objects during a closing argument, we review

for abuse of discretion. *State v. Walters*, 357 N.C. 68, 101, 588 S.E.2d 344, 364, *cert. denied*, 540 U.S. 971, 124 S. Ct. 442, 157 L. Ed. 2d 320 (2003). When there is no objection, we review for gross impropriety. *Phillips*, 365 N.C. at 143, 711 S.E.2d at 150. In all cases, we view the remarks "in context and in light of the overall factual circumstances to which they refer." *Id.* at 135, 711 S.E.2d at 145 (citations and quotation marks omitted).

Judicial deference, however, is not unlimited. In particular, "we have found grossly improper the practice of flatly calling a witness or opposing counsel a liar when there has been no evidence to support the allegation." *Rogers*, 355 N.C. at 462, 562 S.E.2d at 885 (citations omitted); *see also State v. Locklear*, 294 N.C. 210, 217, 241 S.E.2d 65, 70 (1978) ("It is improper for a lawyer to assert his opinion that a witness is lying. He can argue to the jury that they should not believe a witness, but he should not call him a liar." (citations and internal quotation marks omitted)). Despite this prohibition, several statements made during the course of the State's closing argument had just this effect.

Shortly after beginning its closing argument, the State suggested that defendant had manipulated his attorneys into misleading the jury. The prosecutor argued:

> He [defendant] has manipulated his attorneys. Don't let him manipulate you. Don't let him work the system again. . . . [Y]ou heard video confessions of how he killed Heather Catterton and Randi Saldana. And then the defense started, they started putting up these smoke screens, started to try to confuse you.

While this particular statement was borderline, and may have referred to defendant himself rather than defense counsel, the intimations became more direct as the argument progressed. Just a few minutes later, the State argued:

> [A]t no point, no point in the last 18 months since this has been pending trial, has he ever recanted killing Heather or Randi. Never. Not until two years later when he could look at everything, when he can study the evidence, when he can get legal advi[c]e from his attorneys, does he come up with this elaborate tale as to what took place.

Almost immediately, the State emphasized this point a second time:

> Two years later, after he gives all these confessions to the police and says exactly how he killed Heather and

> Randi Saldana . . . the defense starts. The defendant, along with his two attorneys, come together to try and create some sort of story.

In response to this third statement, defense counsel objected and the trial court sustained the objection; however, the trial judge offered no corrective instruction, but instead told the jury only that he would "sustain the objection as to the argument and odd comment." Despite this ruling and judicial admonition, the prosecutor continued in a similar vein. In conclusion, the prosecutor argued:

> Think back to December 5th of 2009 when he knew nothing, when he had no legal advice; consistently, voluntarily told the police everything, and it was consistent with what the evidence showed. . . . For hours you watched this man confess to killing Heather and Randi Saldana, and now, after 18 months to two years, the defense begins and they put up smoke screens and they tried to confuse you? . . . We've got two women dead, and he killed them. I ask that you find the defendant guilty, first-degree murder, of killing Heather Catterton. Thank you.

In context, the import of these arguments is clear: The State argued to the jury, not only that defendant had confessed truly and recanted falsely, but that he had lied on the stand in cooperation with defense counsel. Whether or not defendant committed perjury, there was no evidence showing that he had done so at the behest of his attorneys. Accordingly, we hold that the prosecutor's statements to this effect were grossly improper, and the trial court erred by failing to intervene *ex mero motu*.

CONCLUSION

Defendant has identified three errors that occurred during his capital trial for the murder of Heather Catterton. Regardless of whether any single error would have been prejudicial in isolation, we conclude that the cumulative effect of these three errors deprived defendant of a fair trial. Accordingly, we vacate defendant's conviction and sentence, and remand for a new trial. Because of our disposition of this case, we conclude it is unnecessary to address defendant's motion for appropriate relief; we therefore dismiss defendant's MAR as moot.

NEW TRIAL.

Justice ERVIN did not participate in the consideration or decision of this case.

Justice NEWBY dissenting.

At trial the State presented not one, but two, videotaped confessions by defendant, a third video of defendant at the crime scene explaining the details of the murder to police, and an abundance of corroborating physical evidence to support the confessions. In court defendant recanted his prior statements and testified that he fabricated the murder confessions to avoid longer prison sentences on several robbery charges. After hearing evidence and weighing the credibility of the witnesses, in less than four hours of deliberation, the jury found defendant guilty of first-degree murder. Despite overwhelming evidence of his guilt, the majority unconvincingly asserts that defendant's claims of error were prejudicial requiring a new trial even under the deferential standard of review applicable to each submitted claim. Accordingly, I respectfully dissent.

The majority points to three alleged errors at trial: (1) the admission of victim character testimony from Randi Saldana's sister, Shelly Nations; (2) the admission of too much evidence of defendant's murder of Saldana under North Carolina Rule of Evidence 404(b), particularly the number of photographs of Saldana's burned body; and (3) several comments made by the prosecutor during closing argument. I agree with the majority that the trial court impermissibly admitted Nations's testimony; however, the conflicting evidence of Saldana's lifestyle of drug use and prostitution rendered any effect of that testimony negligible. The remaining allegations do not establish error, much less prejudicial error.

In this case the pivotal question decided by the jury was the credibility of defendant's numerous and detailed incriminatory statements to police against his conflicting testimony at trial. The State's evidence included two separate videotaped interviews with detectives in which defendant confessed to choking to death both Heather Catterton and Randi Saldana. The State also presented a video of defendant showing detectives where he disposed of Catterton's clothing and belongings following her murder and a video of defendant giving detectives a detailed walk-through of his mother's home, where the two murders occurred. The scientific evidence was inconclusive. Seeking to undermine his pretrial assertions, defendant testified at trial that he initially confessed to the two murders in the hope of receiving leniency on several pending robbery charges. Defendant further testified that Catterton died in his mother's home from a drug overdose and that Saldana died in the same home from voluntary, sex-related asphyxiation, both within a month of each other. His initial confessions and his later conflicting

trial testimony regarding the deaths of Catterton and Saldana could not have both been true.

The majority correctly holds that the trial court properly admitted evidence of Saldana's murder under North Carolina Rules of Evidence 404(b) to show defendant acted with a common scheme, plan, or design. Defendant repeatedly confessed that he strangled Saldana and suffocated Catterton. Saldana's autopsy report confirmed that she was strangled to death, while Catterton's cause of death remained inconclusive. In response, the State presented Rule 404(b) evidence of Saldana's murder by strangulation to prove that defendant, as he confessed, also intentionally suffocated Catterton. Saldana's murder undoubtedly satisfies the Rule 404(b) criteria: Defendant confessed to both murders during the same interviews with police; both victims were young, white female prostitutes who exchanged sex with defendant for drugs; their circles of acquaintances overlapped significantly; both had sex with defendant in the same trailer; both died in his mother's house; both of the victims' bodies were temporarily stored in the basement of the home where they died and later dumped in rural areas of York County, South Carolina; defendant admitted that he killed both by either strangulation or suffocation; and lastly, both victims died within a month of each other. *See State v. Howell*, 343 N.C. 229, 236, 470 S.E.2d 38, 42 (1996) (upholding the admission of 404(b) evidence to prove the defendant's identity, common plan, and lack of mistake when both victims were black prostitutes and both were picked up by the defendant in the same area, taken to the defendant's bus at night, and bound, one with wire and the other with duct tape).

Notwithstanding the conclusion that the evidence was admissible under 404(b), the majority holds that the trial court abused its discretion under North Carolina Rule of Evidence 403 in admitting "an excessive amount" of the 404(b) evidence. To justify reversal, a trial court's ruling on a Rule 403 determination must be "manifestly unsupported by reason or . . . so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988) (citation omitted). The majority classifies the trial court's decision as necessarily arbitrary, but gives no guidance to the trial court upon retrial on where to draw the line, how much evidence is too much, or what particular evidence is prohibited.

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." N.C. R.

Evid. 403. In the context of the Rule 403 balancing test, the prosecution is entitled to put on its case and should not be penalized because the acts a defendant is accused of committing are particularly gruesome. The United States Supreme Court has noted:

> When a juror's duty does seem hard, the evidentiary account of what a defendant has thought and done can accomplish what no set of abstract statements ever could, not just to prove a fact but to establish its human significance, and so to implicate the law's moral underpinnings and a juror's obligation to sit in judgment. Thus, the prosecution may fairly seek to place its evidence before the jurors, as much to tell a story of guiltiness as to support an inference of guilt, to convince the jurors that a guilty verdict would be morally reasonable as much as to point to the discrete elements of a defendant's legal fault.

Old Chief v. United States, 519 U.S. 172, 187-88, 117 S. Ct. 644, 653-54, 136 L. Ed. 2d 574, 592 (1997). This "persuasive power of the concrete and particular" is especially important in capital cases in which grisly details arise quite frequently. *Id.* at 187, 117 S. Ct. at 653, 136 L. Ed. 2d at 592. The more relevant the State's evidence is, the more likely it is to persuade the jury of a defendant's guilt of the particular crime charged. Rule 403 does not prohibit probative evidence simply because it strongly influences the jury's verdict or the State relies on it heavily at trial.

The majority ignores the highly probative nature of the Saldana 404(b) evidence and then fails to identify any unfair prejudice that substantially outweighs its probative value. Against defendant's assertions that he contrived the portion of his videotaped confessions describing how he killed Catterton and Saldana, the Saldana 404(b) evidence serves to establish that Saldana was in fact strangled. The physical evidence of Saldana's murder corroborates defendant's confession that he killed her and, considering the striking similarities in the two murders, discredits defendant's recantation of his confession to the Catterton murder. Defendant entwined details of the two murders throughout his taped confessions, making the Saldana 404(b) evidence an unavoidable and significant part of the State's case-in-chief. Further, many of the State's witnesses were familiar with both murders and testified as to their knowledge. Nonetheless, ignoring the interrelationship of the two murder investigations, the majority believes the highly probative 404(b) evidence is unfairly prejudicial in part simply because the State referenced it on seven of the eight days it presented evidence at trial. Without any support from our case law, the majority creates a vague,

unworkable rule that limits admissible evidence under Rule 403 and discourages the State from relying on probative evidence. In so concluding, the majority fails to adhere to the deferential standard of review for abuse of discretion.

Whether photographic evidence "is more probative than prejudicial and what constitutes an excessive number of photographs in the light of the illustrative value of each . . . lies within the discretion of the trial court." *Hennis*, 323 N.C. at 285, 372 S.E.2d at 527 (citation omitted). "Photographs of a homicide victim may be introduced even if they are gory, gruesome, horrible or revolting, so long as they are used for illustrative purposes and so long as their excessive or repetitious use is not aimed solely at arousing the passions of the jury." *Id.* at 284, 372 S.E.2d at 526 (citations omitted). "When a photograph add[s] nothing to the State's case, then its probative value is nil, and nothing remains but its tendency to prejudice." *Id.* at 286, 372 S.E.2d at 527 (internal citations and quotation marks omitted). "This Court has rarely held the use of photographic evidence to be unfairly prejudicial . . . ." *State v. Robinson*, 327 N.C. 346, 357, 395 S.E.2d 402, 409 (1990).

The majority states in conclusory fashion that the trial court erred in admitting some of the photographs of Saldana's body because those photographs add nothing of probative value under Rule 403. A careful analysis of the photographs refutes this conclusion. Of the fifteen photographs at issue, the first three photographs (Exhibits 45, 46, and 47) depicted Saldana's burned body lying substantially covered in debris in a wooded area. Two of those photographs were taken from a distance and from different angles. The third photograph was a close-up of the body. The witness who first found the body used these three photographs to show the rural nature of the area and the body's appearance upon its discovery. This testimony corroborated defendant's videotaped confession regarding his disposal of Saldana's body.

The State submitted the next six photographs to illustrate the testimony of a sheriff's deputy who responded to the call that a body had been found. Four of those photographs were of Saldana's body: Exhibit 50 shows a close-up of the wire found wrapped around Saldana's legs, which defendant confessed to using; Exhibits 51 and 52 further show the wire wrapped around Saldana's legs, and Exhibit 53 shows Saldana's burned right arm and hand. Though unpleasant to view, these photographs were highly probative in connecting the physical evidence of Saldana's body's condition to defendant's detailed confession, particularly that he wrapped a lamp cord around Saldana's legs.

The remaining ten photographs in question, used to clarify testimony from the coroner and Saldana's sister, showed Saldana's body after it had been cleaned of debris and prepared for autopsy on the coroner's examining table. Before the coroner testified, the trial court considered, and excluded upon defendant's objection, two of these photographs—Exhibits 60 and 61—as unnecessarily cumulative. Exhibits 57, 58, 59, 62, and 63 aided the coroner's testimony to show the victim's neck injuries and corroborated defendant's videotaped confession that he choked Saldana to death. Exhibits 58, 59, 62, and 63, though graphic, showed the victim's head and torso injuries from different viewpoints. The last photograph focused on the injury to the victim's forehead as described by defendant in his videotaped confession and trial testimony. Three photographs, Exhibits 54, 55, and 56, served to identify the victim by focusing on unique tattoos located on relatively undamaged parts of her body. These depictions were not gruesome and did not present a high risk of prejudice. Saldana's sister described the tattoos, referring to these three photographs during her testimony. These highly probative, standard autopsy photographs, though unsettling, confirm the victim's identity and the condition of her body, allowing the triers of fact to assess the veracity of defendant's confessions and the similarities in the victims' conditions.

These fifteen photographs of the body helped identify the victim and corroborated defendant's pretrial confessions that he strangled, burned, and bound Saldana, and disposed of the body in a rural, wooded area. This Court defers to a trial court's exercise of discretion in allowing such photographs. In *State v. Robinson* we upheld the trial court's admission of twenty-three photographs, eleven of which showed a victim's burned body, his autopsy, or the burned car containing the victim. 327 N.C. at 355, 395 S.E.2d at 407. We concluded that the photographs were not needlessly repetitive, that competent testimony accompanied each photograph, and that each portrayed " 'somewhat different scenes.' " *Id.* at 358, 395 S.E.2d at 409 (quoting *State v. Dollar*, 292 N.C. 344, 355, 233 S.E.2d 521, 527 (1977)). *Compare State v. Waring*, 364 N.C. 443, 497, 701 S.E.2d 615, 649 (2010) (finding no abuse of discretion when the trial court admitted eighteen autopsy photographs because the photographs "were not unnecessarily repetitive, were not unduly gruesome or inflammatory, and illustrated [witness and defendant testimony]"), *cert. denied*, ___ U.S. ___, 132 S. Ct. 132, 181 L. Ed. 2d 53 (2001), *with Hennis*, 323 N.C. at 282, 372 S.E.2d at 525 (finding prejudicial error when, *inter alia*, thirty-five images measuring three feet, ten inches by five feet, six inches showing three murder victims' decomposing bodies and repetitive photographs of the same neck injury on all three bodies were projected on

the wall directly above the defendant's head). Under a straightforward application of our precedent, the trial court did not abuse its discretion in admitting the fifteen photographs here, each serving a different illustrative purpose.

In its last finding of error, the majority insists the State made inappropriate statements to the jury in its closing argument. "It is well settled that the arguments of counsel are left largely to the control and discretion of the trial judge and that counsel will be granted wide latitude in the argument of hotly contested cases." *State v. Williams*, 317 N.C. 474, 481, 346 S.E.2d 405, 410 (1986) (citations omitted). "Counsel is permitted to argue the facts which have been presented, as well as reasonable inferences which can be drawn therefrom." *Id.* (citations omitted). We review for abuse of discretion objections made to a party's closing argument, *State v. Walters*, 357 N.C. 68, 101, 588 S.E.2d 344, 364, *cert. denied*, 540 U.S. 971, 124 S. Ct. 442, 157 L. Ed. 320 (2003), but "the impropriety of the argument must be gross indeed" for us to hold that the trial court abused its discretion by not "correcting *ex mero motu* an argument which defense counsel apparently did not believe was prejudicial when he heard it," *State v. Rogers*, 355 N.C. 420, 462, 562 S.E.2d 859, 885 (2002) (citation and quotation marks omitted).

The majority contends that it was grossly improper for the trial court not to intervene unilaterally when the State, in the majority's view, accused defense counsel of suborning perjury and defendant of being a liar. The majority's mischaracterization ignores our deferential standard of review and disregards defendant's and defense counsel's own declarations. While I agree with the majority that the State strayed too far in its closing argument by saying that "defendant, along with his two attorneys, c[a]me together to try and create some sort of story," the trial court properly sustained defendant's objection to those remarks. Nowhere does the State argue that defendant's attorneys told him to lie in his testimony.

Defendant's major premise here was that his trial testimony was true and that his videotaped confessions were false. In its closing argument, the State submitted that defendant came up with "this elaborate tale as to what took place" after "get[ting] legal advi[c]e from his attorneys." There is nothing grossly improper in the State suggesting that defense counsel provided legal advice to defendant or that defendant contemplated recanting his confessions after his attorneys informed him of the legal consequences of confessing to the murders. Furthermore, defendant himself testified to being manipulative and untruthful. On cross-examination, defendant freely admitted to

manipulating the justice system during the over twenty-five years he had been in and out of prison:

> Q [from the State]. You manipulated the system?
>
> A. Well, I mean, I choose to call it working the system. Manipulation is, you know, in the eye of the beholder. I don't know. I just work the system. I do whatever is best for me. If you want to call it manipulation, then that's fine, I guess.

Defense counsel reinforced defendant's admission during closing argument: "[Defendant is] manipulative, he lies, he tells things to get things . . . . His family says he lies. . . . He lies to bolster himself." Perhaps the one fact both sides agreed on throughout the trial was that defendant was not always truthful. The majority concludes, contrary to precedent, that the trial court erred in allowing the State to agree with the assertions repeatedly made by defendant and his counsel to this effect. *Williams*, 317 N.C. at 481, 346 S.E.2d at 410 ("Counsel is permitted to argue the facts which have been presented . . . .").

The majority has identified three potential errors over the course of a five-week trial and summarily concludes that these alleged errors when considered together prejudiced defendant's trial. The identification of alleged errors, however, is not reversible per se; defendant must demonstrate that "there is a reasonable possibility that, had the error[s] in question not been committed, a different result would have been reached at the trial." N.C.G.S. § 15A-1443(a) (2013). *See State v. Badgett*, 361 N.C. 234, 248, 644 S.E.2d 206, 215, *cert. denied*, 552 U.S. 997, 128 S. Ct. 502, 169 L. Ed. 2d 351 (2007) (concluding admission of the defendant's prior conviction was harmless when the "defendant has failed to demonstrate any reasonable possibility that the jury would have reached a different result had the evidence been excluded"); *State v. DeLeonardo*, 315 N.C. 762, 772, 340 S.E.2d 350, 357 (1986) ("Even assuming error *arguendo*, defendant has failed to meet his burden of showing that a reasonable possibility exists, that had the evidence . . . not been admitted, a different result would have been reached at his trial.").

As stated earlier, I agree the trial court erred by admitting Nations's victim character testimony but the conflicting evidence of Saldana's lifestyle of drug use and prostitution negated any effect of that testimony. Thus, defendant must show the two additional alleged errors, the admission of "an excessive amount" of 404(b) evidence and several comments by the prosecutor during closing argument, created a "reasonable possibility" of changing the jury's verdict. Regarding the 404(b) evidence,

the trial court continually instructed the jury, often multiple times a day, that the evidence

> is offered, and you may consider it, for the purpose of showing that there existed in the mind of the defendant a plan, scheme, system, or design involving the crime charged in this case, and you may not consider it for any other purpose in regard to the trial of this case.

The trial court repeatedly and consistently urged the jury to use the evidence only as instructed throughout the trial:

> [L]et me put it this way: Evidence has been received tending to show that Randi Saldana died under circumstances that have some similarity to the charge against the defendant in the case that we are trying, and the case we're trying is the one which he is charged with the murder of Heather Catterton. Now, this evidence was received, and will be received and considered by you, solely for the purpose of showing that the defendant had existing in his mind a plan, scheme, system, or design involving the crime charged in this case.
>
> . . . .
>
> I want you to understand that if you believe this evidence, you may consider it but only for the limited purpose for which it has been received or may be received subsequently. You may not consider such evidence about the Saldana matter for any other purpose.
>
> . . . . .
>
> Now, members of the jury, at this point I'm going to give you an instruction that's just simply the same instruction I gave you before. That information previously received through the evidence, testimony in regard to Randi Saldana, has a limited purpose . . . .
>
> . . . .
>
> This evidence has been received solely for the purpose of showing any of the following: That the defendant had a motive for the commission of the crime charged in this case; that the defendant had the intent which is a necessary element of the crime charged in this case; that there existed in the mind of the defendant a plan, scheme,

> system, or design involving the crime charged in this case; that the defendant had the opportunity to commit the crime in this case; or the absence of accident in this case.
>
> The state contends, and the defendant denies, that the evidence on this matter shows these things in regard to the offense charged, that is, the murder of Heather Catterton. It is for you to decide what, in fact, the evidence does show. If you believe this evidence, you may consider it, but only for the limited purposes for which it has been received.

Similarly, during closing argument, when defendant objected to the prosecutor's statement, the trial court "sustain[ed] the objection as to the argument and the odd comment."

Most importantly, here there is overwhelming evidence of defendant's guilt, including the multiple detailed confessions to the murder he provided shortly after his arrest. An abundance of corroborating physical evidence supported defendant's confessions. Defendant's only defense was that he had fabricated his confessions. The jury took little time, less than four hours, to reject defendant's recantation and find him guilty. Defendant has failed to carry his burden of showing any reasonable possibility that the jury would have reached a different result absent the alleged errors.

The trial court determines the competency of evidence, including witness testimony, while the jury weighs the credibility of the evidence presented. *State v. Witherspoon*, 210 N.C. 647, 649, 188 S.E. 111, 112 (1936) (citation omitted). Here the jury found credible defendant's taped confessions, not his trial testimony. Defendant has failed to show that absent the alleged errors the trial's outcome would have been different. This Court should uphold the jury's determination of defendant's guilt. Accordingly, I respectfully dissent.

Chief Justice MARTIN joins in this dissenting opinion.

TERRY WAYNE WOOD
v.
JEREMY NUNNERY, NORTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY, AND FIREMEN'S INSURANCE COMPANY OF WASHINGTON, D.C.

No. 100PA14

Filed 10 April 2015

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous, unpublished decision of the Court of Appeals, ___ N.C. App. ___, 757 S.E.2d 526 (2014), affirming an order entered on 11 February 2013 by Judge Edwin G. Wilson, Jr. in Superior Court, Forsyth County. On 11 June 2014, the Supreme Court allowed plaintiff's conditional petition for discretionary review as to additional issues. Heard in the Supreme Court on 12 January 2015.

Maynard & Harris, Attorneys at Law, PLLC, by C. Douglas Maynard, Jr., for plaintiff-appellant/appellee.

Van Laningham Duncan PLLC, by L. Cooper Harrell; Smith Moore Leatherwood LLP, by James G. Exum, Jr.; and Bennett & Guthrie, PLLC, by Rodney A. Guthrie and Roberta King Latham, for defendant-appellant/appellee Jeremy Nunnery.

Brown Moore & Associates, PLLC, by Jon R. Moore; and White & Stradley, PLLC, by J. David Stradley, for North Carolina Advocates for Justice, amicus curiae.

Pinto Coates Kyre & Bowers, PLLC, by Deborah J. Bowers, for North Carolina Association of Defense Attorneys, amicus curiae.

PER CURIAM.

DISCRETIONARY REVIEW IMPROVIDENTLY ALLOWED.

STATE v. MARTIN

[368 N.C. 31 (2015)]

STATE OF NORTH CAROLINA
v.
TONY LINWOOD MARTIN, JR.

No. 203A14

Filed 10 April 2015

Appeal pursuant to N.C.G.S. § 7A-30(2) from the unpublished decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 762 S.E.2d 1 (2014), finding no error in part and vacating and remanding in part a judgment entered on 22 March 2013 by Judge J. Carlton Cole in Superior Court, Halifax County. Heard in the Supreme Court on 16 February 2015.

Roy Cooper, Attorney General, by Kimberly N. Callahan, Assistant Attorney General, for the State-appellant.

Ben G. Irons II for defendant-appellee.

PER CURIAM.

For the reasons stated in the dissenting opinion, the decision of the Court of Appeals is reversed. This case is remanded to the Court of Appeals for consideration of defendant's remaining issues on appeal.

REVERSED AND REMANDED.

STATE v. EDGERTON

[368 N.C. 32 (2015)]

STATE OF NORTH CAROLINA
v.
HOWARD JUNIOR EDGERTON

No. 204A14

Filed 10 April 2015

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 759 S.E.2d 669 (2014), vacating a judgment entered on 21 March 2013 by Judge Gary M. Gavenus in Superior Court, Rutherford County, and remanding for a new trial. Heard in the Supreme Court on 24 February 2015.

Roy Cooper, *Attorney General*, *by Teresa M. Postell*, *Assistant Attorney General*, *for the State-appellant.*

Michael E. Casterline for defendant-appellee.

PER CURIAM.

For the reasons stated in the dissenting opinion, the decision of the Court of Appeals is reversed. This case is remanded to the Court of Appeals for consideration of defendant's remaining issues on appeal.

REVERSED AND REMANDED.

KIKER v. WINFIELD

[368 N.C. 33 (2015)]

WALLACE SCOTT KIKER
v.
CEDRIC JELANI WINFIELD

No. 225A14

Filed 10 April 2015

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 759 S.E.2d 372 (2014), vacating and remanding an order entered on 18 November 2013 by Judge James M. Webb in Superior Court, Harnett County. Heard in the Supreme Court on 17 March 2015.

Bain, Buzzard & McRae, LLP, by Robert A. Buzzard and Elisa B. Jernigan, for plaintiff-appellant.

Law Offices of Robert E. Ruegger, by Robert E. Ruegger, for defendant-appellee.

PER CURIAM.

AFFIRMED.

POOLE v. UNIV. OF N.C., CHAPEL HILL

[368 N.C. 34 (2015)]

CARL H. POOLE, EMPLOYEE
v.
UNIVERSITY OF NORTH CAROLINA, CHAPEL HILL, EMPLOYER

SELF-INSURED
(CORVEL MANAGEMENT SERVICES, THIRD-PARTY ADMINISTRATOR)

No. 296A14

Filed 10 April 2015

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 762 S.E.2d 223 (2014), affirming an opinion and award filed on 27 August 2013 by the North Carolina Industrial Commission. Heard in the Supreme Court on 17 March 2015.

Law Offices of Martin J Horn, PLLC, by Martin J Horn, for plaintiff-appellee.

Roy Cooper, Attorney General, by Cathy Hinton Pope, Assistant Attorney General, for defendant-appellant.

PER CURIAM.

AFFIRMED.

WARD v. CARMONA

[368 N.C. 35 (2015)]

SHEENA MOODY WARD, PLAINTIFF
v.
LUIS ENRIQUE CARMONA, DEFENDANT AND THIRD-PARTY PLAINTIFF
v.
JUSTIN MICHAEL WARD, THIRD-PARTY DEFENDANT

No. 518PA13

Filed 10 April 2015

1. Negligence—traffic accident at intersection—conflicting evidence

There was sufficient evidence from which a jury could impute negligence to both drivers in a car wreck in which one made a left turn. There was conflicting evidence as to when the driver making the left turn entered the intersection, whether he should have seen the other driver, and the color of the traffic light when the other driver entered the intersection. The jury was in the best position to weigh the evidence.

2. Negligence—traffic accident at intersection—left turn—prior case distinguished

The Court of Appeals did not create a new theory of motor vehicle negligence inconsistent with existing law when it stated, in a traffic accident case involving a left turn at a traffic light, that drivers must maintain a reasonable lookout even with a green light. This case involved a left turn; N.C.G.S. § 20-158(b)(2)(a) permits right turns on red, and *Cicogna v. Holder*, 345 N.C. 488, involved a driver proceeding straight into an intersection on a green light.

On discretionary review pursuant to N.C.G.S. § 7A 31 of a unanimous, unpublished decision of the Court of Appeals, ___ N.C. App. ___, 752 S.E.2d 260 (2013), affirming the trial court's judgment entered on 6 August 2012 and an order entered on 9 August 2012, both by Judge Christine M. Walczyk in District Court, Wake County. Heard in the Supreme Court on 9 September 2014.

E. Gregory Stott for plaintiff-appellant and third-party defendant-appellant.

Brown, Crump, Vanore & Tierney, L.L.P., by Orlando L. Rodriguez, for defendant/third-party plaintiff-appellee.

BEASLEY, Justice.

We consider whether the Court of Appeals erred in affirming[1] the trial court's denial of plaintiff's claim for damages when a jury found defendant and third-party defendant were both negligent in the operation of their vehicles and whether the Court of Appeals created a new theory of motor vehicle law. Because there was sufficient evidence from which the jury could have found both defendant and third-party defendant negligent, the Court of Appeals properly affirmed the trial court's denial of plaintiff's claim and dismissal of plaintiff and third-party defendant's motion for a new trial. We affirm.

This action arose out of an automobile collision in which plaintiff's son, third-party defendant, Justin Michael Ward (hereinafter "Ward"), operated a 1991 Mercedes owned by his mother, plaintiff Sheena Moody Ward on 5 January 2011 at approximately 6:00 p.m.[2] At the time, Ward traveled east on Spring Forest Road in Raleigh, North Carolina. At the same time, defendant, Luis Enrique Carmona (hereinafter "defendant"), operated a 1999 Plymouth van traveling west on Spring Forest Road. These two vehicles collided in the intersection of Spring Forest Road and Departure Drive. Plaintiff filed suit on 15 March 2011 against defendant seeking damages for his alleged negligence. On 26 May 2011, defendant filed an answer and third-party complaint, naming Ward as a third-party defendant.

Ward testified to the following during trial. He stated that he intended to make a left turn at a traffic light at the intersection of Departure Drive and Spring Forest Road. Ward stated in his testimony that as he approached the intersection of Spring Forest Road and Departure Drive, the traffic light was green. To determine whether it was safe to make a left turn, he testified that he came to a complete stop at some point at or in the intersection. After Ward waited at the traffic light for several seconds, the traffic light changed to red. Ward testified his view of oncoming traffic was unobstructed. When he attempted to turn left, Ward knew the traffic light was red. As Ward attempted to complete a left turn onto Departure Drive, Ward's vehicle and defendant's vehicle collided in the intersection.

There were inconsistencies in defendant's testimony regarding the color of the traffic light when he proceeded through the intersection. On direct and cross-examination, defendant repeatedly testified that

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1. We use the term "affirm" noting that the Court of Appeals used "no error" in its opinion.

2. Although we recognize that plaintiff owned the 1991 Mercedes, for ease of reading, we refer to the vehicle as Ward's vehicle.

the light was green as he entered the intersection; however, on cross-examination, at the request of plaintiff's attorney, defendant read his response to a previous interrogatory in which he stated that the light "turned yellow when [he] was approximately eight (8) feet away" from the intersection. Additionally, several exhibits offered by defendant were admitted into evidence. A jury found both defendant and Ward negligent and denied plaintiff any relief. As a result, the trial court ordered that plaintiff recover nothing in a 6 August 2012 amended judgment. The trial court also denied plaintiff and Ward's motion for a new trial. Plaintiff and Ward both appealed the judgment and the order denying their motion for a new trial to the Court of Appeals.

In its opinion, the Court of Appeals affirmed the trial court's order denying the motion for a new trial, concluding that there was sufficient evidence for a jury to find both defendant and Ward negligent. *Ward v. Carmona*, ___ N.C. App. ___, 752 S.E.2d 260, 2013 WL 5629388 at *10 (2013) (unpublished). Plaintiff and Ward petitioned this Court for discretionary review which was allowed on 6 March 2014.

This appeal raises two issues: (1) whether the jury's verdict finding that both defendant and Ward negligently operated their vehicles was contrary to the greater weight of the evidence and, therefore, erroneous as a matter of law, and (2) whether the opinion of the Court of Appeals created a new theory of motor vehicular negligence. We answer these questions in the negative.

[1] The Court of Appeals correctly upheld the jury's verdict finding both defendant and Ward negligent in the operation of their respective vehicles. To prove negligence, a plaintiff must show: "First that there has been a failure to exercise proper care in the performance of some legal duty which the defendant owed the plaintiff . . . and, second that such negligent breach of duty was the proximate cause of the injury—a cause that produced the result in continuous sequence and without which it would not have occurred, and one from which any man of ordinary prudence could have foreseen that such a result was probable under all the facts as they existed." *Mattingly v. N.C. R.R. Co.*, 253 N.C. 746, 750, 117 S.E.2d 844, 847 (1961)(citation omitted).

The function of the jury is to weigh the evidence and determine the credibility of any witnesses. *Strum v. Greenville Timberline, LLC*, 186 N.C. App. 662, 667, 652 S.E.2d 307, 310 (2007) (citing *Anderson v. Hollifield*, 345 N.C. 480, 483, 480 S.E.2d 661, 664 (1997)); *Brown v. Brown*, 264 N.C. 485, 488, 141 S.E.2d 875, 877 (1965) (per curiam) (Jurors are the sole judges of the witnesses' credibility and have a right to believe all,

part, or none of the testimony.). The testimonial and demonstrative evidence presented by defendant and Ward created issues of fact that were submitted to and decided by the jury as the finder of fact. The jury found both defendant and Ward negligent.

Plaintiff argues that there was no competent evidence to support the jury's finding that both drivers were negligent in the operation of their vehicles. By hearing the testimony and viewing the exhibits admitted at trial, however, the jury was in the best position to weigh the evidence. Ultimately, the issue of whether Ward or defendant or both were negligent is a decision for the jury. As to Ward, evidence was conflicting regarding when he entered the intersection and whether he should have seen the other driver. As to defendant, evidence was conflicting on the color of the light when he entered the intersection. Considering the evidence presented by both parties, including the testimonies of Ward and defendant, we hold that there was sufficient evidence from which a jury could impute negligence to both defendant and Ward in the operation of their vehicles.

[2] Additionally, plaintiff incorrectly argues that the Court of Appeals created a new theory of motor vehicle negligence inconsistent with North Carolina motor vehicle law. Specifically, plaintiff argues that the holding in *Cicogna v. Holder* controls and that the judgment and rulings of the trial court are inconsistent with *Cicogna*. 345 N.C. 488, 480 S.E.2d 636 (1997).

In its opinion, in the case *sub judice*, the Court of Appeals stated

> Drivers approaching an intersection have a duty "to maintain a lookout and to exercise reasonable care under the circumstances." *Hyder v. Asheville Storage Battery Co.*, 242 N.C. 553, 557, 89 S.E.2d 124, 128 (1955). Failure to do so "is likely to endanger the safety of persons and property." N.C. Gen. Stat. § 20-4.23(a)(2) (2011).
>
> When drivers approach a green traffic signal at an intersection they must keep "a reasonable lookout for vehicles in or approaching the intersection at excessive speed." *Hyder*, 242 N.C. at 557, 89 S.E.2d at 128. They have a duty to "anticipate and expect the presence of others." *Id.* Drivers "cannot go forward blindly even in reliance on traffic signals." *Id.* Furthermore, "[a]ny person who undertakes to drive a motor vehicle upon a highway must exercise reasonable care to ascertain that such movement can be made in safety before he turns to the right or

> left from a direct line." *Wiggins v. Ponder*, 259 N.C. 277, 279, 130 S.E.2d 402, 404 (1963) (emphasis added); see also N.C. Gen. Stat. § 20-154(a) (2011).

Ward, 2013 WL 5629388 at *4. We emphasize that this analysis by the Court of Appeals must not be interpreted to contradict N.C.G.S. § 20-158 or impose a duty not intended by the statute. That statute provides, in relevant part, that "[w]hen a traffic signal is emitting a steady red circular light controlling traffic approaching an intersection, an approaching vehicle facing the red light shall come to a stop and shall not enter the intersection." N.C.G.S. § 20-158(b)(2)(a) (2014).

Plaintiff is correct in stating that N.C.G.S. § 20-158(b)(2)(a) permits vehicles approaching an intersection with a red circular light to make a right turn; however, this statutory provision allows a driver to make a right turn on red only if the intersection is clear. *Id.* § 20-158(b)(2)(b) (2014). Here Ward was attempting to make or complete a left turn on a red circular light. If Ward entered the intersection while the circular light was green and the light turned red, he was permitted to complete his turn to exit the intersection and avoid blocking traffic as long as he "maintain[ed] a lookout" and "exercise[d] reasonable care under the circumstances." *Hyder*, 242 N.C. at 557, 89 S.E.2d at 128. If Ward had not yet entered the intersection when the light turned red, he had a duty to stop.

In *Cicogna*, this Court held that when the plaintiff had not been "put . . . on notice" that the defendant would not obey the traffic light, the trial court should not have given a contributory negligence instruction to the jury. 345 N.C. at 489, 480 S.E.2d at 637. There, while operating her vehicle, the plaintiff stopped for a red traffic signal. *Id.* at 489, 480 S.E.2d at 636. When the traffic signal facing her turned green, the plaintiff started into the intersection, at which time the defendant struck her vehicle from the left. Id. The plaintiff testified that "she looked both ways and did not see the defendant's vehicle although he was 'right there.' " *Id.* The defendant did not introduce any evidence at trial. 345 N.C. at 489, 480 S.E.2d at 637. The trial court submitted the issue of contributory negligence to the jury despite the plaintiff's objection. *Id.* The jury found in favor of the defendant, and the plaintiff appealed. *Id.* This Court held that contributory negligence should not have been submitted to the jury because there was "no evidence in this case that there was anything that would have put the plaintiff on notice that the defendant would not obey the traffic light." *Id.*

Plaintiff argues here that no evidence indicated Ward was on notice that defendant would proceed through the intersection. But plaintiff's reliance on *Cicogna* is misplaced.

The undisputed evidence presented in *Cicogna* showed that the plaintiff had a green traffic light and proceeded straight into the intersection as allowed under North Carolina law. The defendant approached from the plaintiff's left. These important distinctions show *Cicogna* is not controlling. Therefore, contrary to plaintiff's assertions in this case, the Court of Appeals does not create a new theory of motor vehicle negligence inconsistent with North Carolina statutes and case law.

We hold that the Court of Appeals correctly affirmed the trial court's judgment denying plaintiff's claim for damages and the trial court's order denying plaintiff and Ward's motion for a new trial.

AFFIRMED.

Justice ERVIN did not participate in the consideration or decision of this case.

STATE OF NORTH CAROLINA
v.
LARRY STUBBS

No. 568A03-2

Filed 10 April 2015

Jurisdiction—subject matter jurisdiction—appeal of order granting motion for appropriate relief—Court of Appeals had jurisdiction to review

Where the trial court granted defendant's motion for appropriate relief (MAR), the Court of Appeals had subject matter jurisdiction to hear the State's appeal. The General Statutes give the Court of Appeals jurisdiction to issue writs to supervise the state's trial courts, N.C.G.S. § 7A-32(c), and they also specify that appeals relating to MARs may be taken by writ of certiorari, N.C.G.S. § 15A-1422(c). The language in the Rules of Appellate Procedure that a writ of certiorari may be issued to review an order of a trial court "denying" a MAR does not limit the jurisdiction of the Court of Appeals as established by the General Statutes.

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 754 S.E.2d 174

(2014), reversing and remanding an order granting defendant's motion for appropriate relief entered on 5 December 2012 by Judge Gregory A. Weeks in Superior Court, Cumberland County. Heard in the Supreme Court on 13 January 2015.

Roy Cooper, *Attorney General*, *by Daniel P. O'Brien*, *Special Deputy Attorney General*, *for the State.*

Sarah Jessica Farber for defendant-appellant.

HUDSON, Justice.

In this case we are tasked with determining if the Court of Appeals has subject matter jurisdiction to review the State's appeal from a trial court's ruling on a motion for appropriate relief ("MAR") when the defendant has been granted relief in the trial court. We hold that it does.

In 1973 defendant pleaded guilty to second-degree burglary and assault with intent to commit rape. On the second-degree burglary charge, the trial court sentenced defendant to imprisonment for "his natural life." In 2011 defendant filed a *pro se* MAR in the Superior Court in Cumberland County asking the trial court to set aside his sentence on the burglary charge as cruel and unusual punishment in violation of the Eight Amendment to the United States Constitution. Defendant argued that because of "significant changes" in the sentencing laws, his sentence should now be considered grossly disproportionate.[1] The trial court ordered a hearing and appointed counsel for defendant. After the hearing, the trial court entered an order granting defendant's motion for appropriate relief, vacating the 1973 judgment in the second-degree burglary case, and resentencing defendant to a term of thirty years. Giving credit for time served, the trial court ordered that defendant be immediately released. The State filed a petition for writ of certiorari to review the trial court's order, and by an order dated 13 December 2012, the Court of Appeals allowed the petition, thereby agreeing to hear the case.

After hearing the matter, a panel of the Court of Appeals agreed with the State, ultimately reversing the trial court's order and remanding to the trial court for reinstatement of the original 1973 judgment and commitment. ___ N.C. App. ___, ___, 754 S.E.2d 174, 182 (2014).

1. Under the new Structured Sentencing Act, N.C.G.S. §§ 15A-1340.10 to -1340.23, effective 1 October 1994, defendant would have been sentenced to a maximum of thirty-one and forty-seven months of imprisonment.

Procedurally, the Court of Appeals tackled two challenging questions, resulting in a lead opinion, a concurring opinion, and a dissenting opinion. First, the panel hearing the case considered whether it was bound by the decision of a prior petition panel (which allowed certiorari) that the Court of Appeals had subject matter jurisdiction over the appeal. *Id.* at ___, 754 S.E.2d at 177 n.2. The lead opinion concluded that the panel was bound by that prior determination, citing to *N.C.N.B. v. Virginia Carolina Builders*, 307 N.C. 563, 567, 299 S.E.2d 629, 631-32 (1983) ("[O]nce 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. Further, since 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. Thus the second panel in the instant case had no authority to exercise its discretion [against] reviewing the trial court's order when a preceding panel had earlier decided to the contrary." (first alteration in original)). *Id.* at ___, 754 S.E.2d at 177 n.2. The concurring and dissenting opinions disagreed with the lead opinion on that point, believing that each panel of the Court of Appeals has the authority and ability to address subject matter jurisdiction anew. *Id.* at ___, 754 S.E.2d at 182-88. Second, the Court of Appeals addressed whether it had subject matter jurisdiction to review the State's appeal from a trial court's decision on a defendant's MAR when the defendant prevailed in the trial court. The lead opinion was silent on the matter (believing the panel bound by the prior petition panel's determination), *id.* at ___, 754 S.E.2d at 177 n.2; the concurring opinion believed that the court did have jurisdiction, *id.* at ___, 754 S.E.2d at 183; and the dissent would have held that the court did not have subject matter jurisdiction over such an appeal, *id.* at ___, 754 S.E.2d at 185. Defendant filed a notice of appeal based on the dissenting opinion, which addressed only the issue of subject matter jurisdiction.

The jurisdiction of the Court of Appeals is established in the North Carolina Constitution: "The Court of Appeals shall have such appellate jurisdiction as the General Assembly may prescribe." N.C. Const. art. IV, § 12(2). Following such direction, the General Assembly has stated that the Court of Appeals "has jurisdiction . . . to issue the prerogative writs, including mandamus, prohibition, certiorari, and supersedeas, in aid of its own jurisdiction, or to supervise and control the proceedings of any of the trial courts of the General Court of Justice." N.C.G.S. § 7A-32(c) (2014). More specifically, and also relevant here, the General Assembly has specified when appeals relating to MARs may be taken:

> (c) The court's ruling on a motion for appropriate relief pursuant to G.S. 15A-1415 is subject to review:
>
> (1) If the time for appeal from the conviction has not expired, by appeal.
>
> (2) If an appeal is pending when the ruling is entered, in that appeal.
>
> (3) If the time for appeal has expired and no appeal is pending, by writ of certiorari.

Id. § 15A-1422(c) (2014). Here, given the timing, appeal of the MAR would fall under subdivision (c)(3): by writ of certiorari. Notably, subsection 15A-1422(c) does not distinguish between an MAR when the State prevails below and an MAR under which the defendant prevails. Accordingly, given that our state constitution authorizes the General Assembly to define the jurisdiction of the Court of Appeals, and given that the General Assembly has given that court broad powers "to supervise and control the proceedings of any of the trial courts of the General Court of Justice," *id.* § 7A-32(c), and given that the General Assembly has placed no limiting language in subsection 15A-1422(c) regarding which party may appeal a ruling on an MAR, we hold that the Court of Appeals has jurisdiction to hear an appeal by the State of an MAR when the defendant has won relief from the trial court.

As noted by the parties and the Court of Appeals, the Rules of Appellate Procedure are also in play here. *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."). Appellate Rule 21 states in relevant part:

> *Review of the Judgments and Orders of Trial Tribunals.* The writ of certiorari may be issued in appropriate circumstances by either appellate court to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action, or when no right of appeal from an interlocutory order exists, or for review pursuant to N.C.G.S. § 15A-1422(c)(3) of an order of the trial court *denying* a motion for appropriate relief.

N.C. R. App. P. 21(a)(1) (second emphasis added). Defendant argues that because of this Rule, the State may not appeal an order of a trial court *granting* a motion for appropriate relief. We disagree. As stated plainly

in Rule 1 of the Rules of Appellate Procedure, "[t]hese rules shall not be construed to extend or limit the jurisdiction of the courts of the appellate division as that is established by law." *Id.* at R. 1(c). Therefore, while Rule 21 might appear at first glance to limit the jurisdiction of the Court of Appeals, the Rules cannot take away jurisdiction given to that court by the General Assembly in accordance with the North Carolina Constitution.

As for whether a second panel of the Court of Appeals can revisit a determination of subject matter jurisdiction after a previous panel has already done so, we simply note that here, both panels did have subject matter jurisdiction.

Accordingly, the decision of the Court of Appeals is affirmed.

AFFIRMED.

Justice BEASLEY and Justice ERVIN did not participate in the consideration or decision of this case.

STATE OF NORTH CAROLINA
v.
JOSE GUSTAVO GALAVIZ-TORRES

No. 249PA14

Filed 11 June 2015

1. Drugs—possession and transportation offenses—jury instructions—actual knowledge of identity of drugs

In defendant's trial resulting in his convictions for trafficking in at least 400 grams of cocaine by possession, trafficking in at least 400 grams of cocaine by transportation, and possession of cocaine with the intent to sell or deliver, the trial court did not err by failing to adequately instruct the jury that the State had to prove beyond a reasonable doubt that defendant actually knew that he had possessed and transported cocaine. Because defendant did not contend that he did not know the true identity of what he possessed, the trial court was not required to give the additional instruction that the jury must find that "defendant knew that what he possessed was cocaine."

2. Drugs—possession and transportation offenses—jury instructions—actual knowledge of identity of drugs—plain error review

In defendant's trial resulting in his convictions for trafficking in at least 400 grams of cocaine by possession, trafficking in at least 400 grams of cocaine by transportation, and possession of cocaine with the intent to sell or deliver, the trial court did not commit plain error by failing to adequately instruct the jury that the State had to prove beyond a reasonable doubt that defendant actually knew that he had possessed and transported cocaine. The State presented considerable evidence that defendant actually knew that he possessed and transported cocaine, and therefore the Supreme Court could not conclude that any error had a probable impact on the jury's verdict.

On discretionary review pursuant to N.C.G.S. § 7A 31 of a unanimous, unpublished decision of the Court of Appeals, ___ N.C. App. ___, 763 S.E.2d 17 (2014), reversing judgments entered on 24 May 2013 by Judge Hugh B. Lewis in Superior Court, Mecklenburg County, and ordering that defendant receive a new trial. Heard in the Supreme Court on 19 March 2015.

Roy Cooper, *Attorney General*, *by Joseph L. Hyde*, *Assistant Attorney General*, *for the State-appellant.*

Glenn Gerding for defendant-appellee.

ERVIN, Justice.

Defendant Jose Gustavo Galaviz-Torres was convicted of one count of trafficking in at least 400 grams of cocaine by possession, one count of trafficking in at least 400 grams of cocaine by transportation, and one count of possession of cocaine with the intent to sell or deliver. A unanimous panel of the Court of Appeals reversed defendant's convictions and awarded defendant a new trial. We now reverse the Court of Appeals' decision.

In March 2012, officers of the Charlotte-Mecklenburg Police Department and the Drug Enforcement Administration began a joint investigation into defendant's activities based on information that had been received from a confidential informant indicating that defendant was trafficking in cocaine. On 26 March 2012, investigating officers arranged for the confidential informant to purchase approximately two

kilograms of cocaine from defendant in a Taco Bell parking lot. After defendant arrived at the parking lot driving a gray van,[1] the informant met with defendant, observed that the drugs to be purchased were in the vehicle, and contacted Special Agent Jorge Alamillo of the Drug Enforcement Administration, who gave the signal that defendant should be arrested. During a search of the van, investigating officers found a gift bag next to the driver's seat containing three packages of cocaine, the largest of which held a kilogram of that substance.

After having been advised of his *Miranda* rights, defendant told investigating officers that he had procured the cocaine from an individual named Gavilan, that he paid $32,000 for a kilogram of cocaine, and that cocaine could be found at his residence.[2] In addition, defendant took investigating officers to the location at which he claimed to have obtained the cocaine found in the van, although a search of the premises in question did not result in the discovery of any controlled substances. Finally, defendant admitted to investigating officers that he had previously sold or delivered nine ounces of cocaine in Gastonia and that, on the day of his arrest, he was supposed to make $2,000 for delivering the cocaine that had been seized from the vehicle that he was driving.

On 2 April 2012, defendant was indicted for trafficking in at least 400 grams of cocaine by possession, trafficking in at least 400 grams of cocaine by transportation, and possession of cocaine with the intent to sell or deliver. The charges against defendant came on for trial at the 20 May 2013 criminal session of the Superior Court, Mecklenburg County, before the trial court and a jury. At trial, defendant testified that he had arrived at the Taco Bell on the date in question to deliver ladders at the request of a man for whom he had performed construction work in the past. Defendant claimed that he had borrowed the van that he was driving, that he did not know that the van contained cocaine, and that the cocaine seized from the van did not belong to him. In addition, defendant denied having made any statements to investigating officers admitting that he had been transporting cocaine on the day in question or that he had been paid to transport cocaine in the past. Although defendant did acknowledge having told investigating officers that there

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1. The van that defendant was operating at the time that he arrived at the Taco Bell parking lot was not the van in which defendant had left his residence in Gastonia earlier that day. As defendant drove from Gastonia to Charlotte, he was stopped by investigating officers. Although a drug dog alerted on a portion of the van that defendant was driving, a search of that vehicle did not reveal the presence of any controlled substances.

2. Investigating officers recovered cocaine during a subsequent search of defendant's Gastonia residence.

was cocaine at his house, he denied being the owner of the cocaine that was found there.

At the conclusion of the trial, the trial court instructed the jury that, to convict defendant of possession of cocaine with the intent to sell or deliver, the jury had to be satisfied beyond a reasonable doubt:

> First, that the Defendant knowingly possessed cocaine. . . . A person possesses cocaine when he is aware of its presence and has either by himself or together with others both the power and intent to control the disposition or use of that substance.
>
> And second, that the Defendant intended to deliver -- intended to sell or deliver the cocaine.

Similarly, the trial court instructed the jury that, to convict defendant of trafficking in at least 400 grams of cocaine by possession, the jury must be satisfied beyond a reasonable doubt:

> First, that the Defendant knowingly possessed cocaine. A person possesses cocaine if he is aware of its presence and has either by himself or together with others both the power and intent to control the disposition or use of that substance.
>
> And second, that the amount of cocaine which the Defendant possessed was 400 grams or more.

Finally, the trial court instructed the jury that, to convict defendant of trafficking in at least 400 grams of cocaine by transportation, the jury had to be satisfied beyond a reasonable doubt:

> First, that the Defendant knowingly transported cocaine from one place to another.
>
> And second, that the amount of cocaine which the Defendant transported was 400 grams or more.

Although the trial court instructed the jury concerning the concepts of actual and constructive possession, the court clearly indicated that both forms of possession required the jury to find beyond a reasonable doubt that the alleged possessor had to be "aware of its presence" and exercise control over it. The trial court further instructed the jury that close proximity to the substance that defendant was charged with possessing did "not by itself permit an inference that the Defendant was aware of its presence" or had the power or intent to control its disposition or use.

Defendant's trial counsel did not object to any of the trial court's instructions or request that any additional instructions be given.

On 24 May 2013, the jury returned a verdict finding defendant guilty as charged. After consolidating defendant's convictions for possession of cocaine with the intent to sell or deliver and trafficking in at least 400 grams of cocaine by possession for judgment, the trial court entered a judgment sentencing defendant to a term of 175 to 222 months imprisonment and requiring defendant to pay a $250,000 fine. In addition, the trial court entered a judgment sentencing defendant to a consecutive term of 175 to 222 months imprisonment and the payment of a $250,000 fine based upon his conviction for trafficking in at least 400 grams of cocaine by transportation. Defendant noted an appeal to the Court of Appeals from the trial court's judgments.

On appeal, defendant argued that the trial court had committed plain error by failing to adequately instruct the jury that the State had to prove beyond a reasonable doubt that he knew that he had possessed and transported cocaine. S*tate v. Galaviz-Torres*, ___ N.C. App. ___, 763 S.E.2d 17, 2014 WL 2993850, at *2 (2014) (unpublished). In reversing the trial court's judgments and awarding defendant a new trial, the Court of Appeals held, in reliance on its prior decision in *State v. Coleman*, ___ N.C. App. ___, 742 S.E.2d 346, *disc. rev. denied*, 367 N.C. 271, 752 S.E.2d 466 (2013), that the trial court was required to instruct the jury in accordance with footnote four to North Carolina Pattern Jury Instructions – Criminal 260.17 (drug trafficking by possession) [N.C.P.I. Crim. 260.17] and Criminal 260.30 (drug trafficking by transportation) [N.C.P.I. Crim. 260.30] because defendant contended at trial that he did not know that he possessed a controlled substance. *Galaviz-Torre*s, 2014 WL 2993850, at *3-4. The Court of Appeals further concluded that the failure to give the instructions in footnote four in this case constituted plain error, *id.* at *5, despite the presence of defendant's " 'overwhelming and uncontroverted evidence of guilt.' " *Id.* at *4 (quoting Coleman, ___ N.C. App. at ___, 742 S.E.2d at 352). We reverse the decision of the Court of Appeals.

[1] "Felonious possession of a controlled substance has two essential elements. The substance must be possessed and the substance must be knowingly possessed." *State v. Weldon*, 314 N.C. 401, 403, 333 S.E.2d 701, 702 (1985) (citation and quotation marks omitted). A presumption that the defendant has the required guilty knowledge exists in the event that the State makes a prima facie showing that the defendant has committed a crime, such as trafficking by possession, trafficking by transportation, or possession with the intent to sell or deliver, that lacks a specific intent element. *See State v. Elliott*, 232 N.C. 377, 378, 61 S.E.2d

93, 95 (1950). However, when the defendant denies having knowledge of the controlled substance that he has been charged with possessing or transporting, the existence of the requisite guilty knowledge becomes "a determinative issue of fact" about which the trial court must instruct the jury. *State v. Boone*, 310 N.C. 284, 294, 311 S.E.2d 552, 559 (1984), *overruled on other grounds by State v. Oates*, 366 N.C. 264, 267, 732 S.E.2d 571, 573-74 (2012); *see also State v. Noble*s, 329 N.C. 239, 244, 404 S.E.2d 668, 671 (1991) (stating that, "when the defendant introduces evidence of lack of guilty knowledge the court must charge on it"); *Elliott*, 232 N.C. at 378-79, 61 S.E.2d at 95 (same). As a result, given that defendant denied having knowingly possessed the cocaine found in the van that he was driving, the ultimate issue raised by the State's challenge to the Court of Appeals' decision is whether the trial court's instructions, which consisted of a recitation of N.C.P.I. Crim. 260.17 and N.C.P.I. Crim. 260.30 without the material contained in footnote four, adequately informed the jury that, in order to convict defendant of the offenses with which he had been charged, it must find beyond a reasonable doubt that defendant actually knew that he had cocaine in his possession.

In *Boone*, the defendant was convicted of possessing a controlled substance after investigating officers discovered marijuana inside a duffel bag found in the trunk of the defendant's car. 310 N.C. at 285-86, 311 S.E.2d at 554. At trial, the defendant admitted that he knew that a duffel bag had been placed in the trunk of his car. However, the defendant denied that he owned the duffel bag or had any knowledge of its contents. *Id.* at 293-94, 311 S.E.2d at 558-59. At the conclusion of all of the evidence, the trial court instructed the jury:

> "Now, Ladies and Gentlemen of the Jury, I charge that for you to find the defendant guilty of possessing marijuana, a controlled substance with the intent to sell and/or deliver it, the State must prove two things beyond a reasonable doubt. First, that the defendant knowingly possessed marijuana. *And the defendant, in that connection, the defendant knew or had reason to know that what he possessed was marijuana and marijuana is a controlled substance.*"

Id. at 291, 311 S.E.2d at 557 (emphasis added by court.). After noting that the instruction delivered by the trial court had been taken from the relevant pattern jury instruction, we held that the instruction in question was inconsistent with the applicable law on the grounds that "actual knowledge of the presence of the narcotic on the part of a defendant is an essential ingredient of the offense of possession of narcotics." *Id.* at

291, 293, 311 S.E.2d at 557-58 (citations omitted). As a result, we held "that the trial court erred in instructing the jury that defendant could be found guilty of possessing marijuana if he had reason to know that what he possessed was marijuana" and noted that "the court should have instructed the jury that the defendant is guilty only in the event he knew the marijuana was in the trunk of his automobile and that if he was ignorant of that fact, and the jury should so find, they should return a verdict of not guilty." *Id.* at 294, 311 S.E.2d at 559 (citing *Elliott*, 232 N.C. at 379, 61 S.E.2d at 95).

In reliance upon *Boone*, footnote four to N.C.P.I. Crim. 260.17 states that, "[i]f the defendant contends that he did not know the true identity of what he possessed, add this language to the first sentence: 'and the defendant knew that what he possessed was (name substance).' "[3] 3 N.C.P.I. – Crim. 260.17 n.4 (June 2012). As modified by the language found in footnote four, the pattern instruction applicable to the offense of trafficking in cocaine by possession would read, in pertinent part, that:

> For you to find the defendant guilty of this offense the State must prove two things beyond a reasonable doubt:
>
> First, that the defendant knowingly possessed cocaine *and the defendant knew that what he possessed was cocaine*. A person possesses cocaine if he is aware of its presence and has (either by himself or together with others) both the power and intent to control the disposition or use of that substance.

3 N.C.P.I. Crim. 260.17, at 1-2 & n.4 (emphasis added) (footnote call number omitted). In this case, defendant contended before the Court of Appeals and contends before this Court that the trial court should have added language from footnote four to its instructions given the existence of evidence tending to show that he was unaware that the gift bag was in the van or that the gift bag contained cocaine.

Although defendant argues that the guilty knowledge requirement is not satisfied when the record shows that he acknowledged possessing a particular substance without knowing the identity of that substance

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3. Similarly, footnote four to N.C.P.I. Crim. 260.30, which relates to the offense of trafficking in certain controlled substances by transportation, provides that the jury should be instructed in appropriate cases that "the defendant knew what he transported was" a controlled substance. 3 N.C.P.I. – Crim. 260.30 n.4 (June 2012). The textual discussion concerning the manner in which the jury should be instructed in a case involving a trafficking by possession charge applies equally to a case in which the defendant has been charged with trafficking in a controlled substance by transportation.

or possessed a particular container while remaining ignorant of its contents and that, in such circumstances, the language contained in footnote four should be included in the trial court's instructions to the jury, the present case does not involve either of these sets of circumstances. In this case, defendant did not either deny knowledge of the contents of the gift bag in which the cocaine was found or admit that he possessed a particular substance while denying any knowledge of the substance's identity. Instead, defendant simply denied having had any knowledge that the van that he was driving contained either the gift bag or cocaine. As a result, since defendant did not "contend[ ] that he did not know the true identity of what he possessed," *id.* n.4, the prerequisite for giving the instruction in question simply did not exist in this case. As a result, the trial court did not err by failing to deliver the additional instruction contained in footnote four to N.C.P.I Crim. 260.17 and N.C.P.I. Crim. 260.30 in this case.

In reaching a contrary conclusion, the Court of Appeals determined that it was required to decide this issue in defendant's favor based on its previous decision in *State v. Coleman*. In *Coleman*, investigating officers found a box containing marijuana and heroin in the trunk of a vehicle driven by the defendant. ___ N.C. App. at ___, 742 S.E.2d at 347. Although he readily admitted that he knew that the box was in the vehicle's trunk, the defendant told investigating officers following his arrest for trafficking in heroin[4] that he believed that the box contained marijuana and cocaine instead of marijuana and heroin. *Id.* at ___, 742 S.E.2d at 349. As was the case in the present proceeding, the trial court in Coleman instructed the jury using N.C.P.I. Crim. 260.17 and N.C.P.I. Crim. 260.30 without including the language contained in footnote four. *Id.* at ___, 742 S.E.2d at 351.

On appeal, the principal issue before the Court of Appeals was whether the defendant's statements to investigating officers that he believed that the box contained marijuana and cocaine rather than marijuana and heroin amounted to a contention that he did not know that the box contained heroin, thereby making the extent of the defendant's guilty knowledge a material issue for the jury's consideration.[5] *Id.* at ___, 742 S.E.2d at 350. In its opinion, the Court of Appeals concluded

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4. According to the Court of Appeals, the defendant in *Coleman* was never charged with having committed any marijuana-related offense.

5. As the State has pointed out in its brief before this Court, the State made no attempt to persuade the Court of Appeals in *Coleman* that the trial court did not err by failing to instruct the jury in accordance with footnote four.

that the trial court had erred by failing to include the language in footnote four in its jury instructions, *id.* at ___, 742 S.E.2d at 350, and held that, in light of the facts contained in the record, the trial court's failure to include that language in its jury instructions constituted plain error, *id.* at ___, 742 S.E.2d at 350-52.

In view of the substantial difference between the facts at issue here and those at issue in *Coleman*, we conclude that the Court of Appeals erred by determining that the decision in *Coleman* controlled the outcome in this case. On the one hand, the defendant in *Coleman* admitted that he knew of the box that contained marijuana and heroin. However, while he admitted that he thought that the box contained cocaine in addition to marijuana, he said that he did not believe that the box contained heroin. In this case, defendant denied any knowledge of either the gift bag located in the van that he was driving or its contents. In the factual situation before the Court in *Coleman*, the instruction in footnote four served the purpose of informing the jury that, in order to convict, it must find that the defendant "knowingly possessed" a controlled substance (that is, the defendant was "aware of its presence") and that the defendant "knew that what he possessed was" the drug in question. In other words, the instruction in footnote four made it clear to the jury that, for the defendant to be guilty, he had to both knowingly possess a substance and know that the substance that he possessed was the substance that he was charged with possessing. In this case, on the other hand, defendant denied any knowledge that he possessed any container or controlled substance at all. Thus, the basic pattern instruction given here, which required the jury to find that defendant "knowingly possessed" the drug,—that he was in fact "aware of its presence" and had the ability to exercise control over it—adequately informed the jury of the determination that it must make in light of the position that defendant asserted. For that reason, the trial court's instructions here, unlike the instructions delivered in *Coleman*, adequately addressed the issue that the jury had to decide to determine defendant's guilt or innocence.[6] As a result, the trial court did not err, much less commit plain error, by failing to instruct the jury in accordance with footnote four to N.C.P.I. Crim. 260.17 and N.C.P.I. Crim. 260.30 in this case.

[2] In addition, even if defendant had been correct in contending that the trial court erred by failing to instruct the jury in accordance with

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6. The Court of Appeals distinguished *Coleman* on the same basis in *State v. Beam*, ___ N.C. App. ___, ___, 753 S.E.2d 232, 233, d*isc. rev. denied*, 367 N.C. 496, 757 S.E.2d 904 (2014), and reached a result consistent with the analysis set out in the text of this opinion in *State v. Lopez*, 176 N.C. App. 538, 545-46, 626 S.E.2d 736, 742 (2006).

footnote four, any such error would not have risen to the level of plain error given the record developed at trial in this case.

> For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial. To show that an error was fundamental, a defendant must establish prejudice—that, after examination of the entire record, the error had a probable impact on the jury's finding that the defendant was guilty.

State v. Lawrence, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (citations and internal quotations marks omitted); *see also State v. Grice*, 367 N.C. 753, 764, 767 S.E.2d 312, 321 (2015) (noting that plain error "is reserved for the exceptional case" and "requires a defendant to show that the prejudicial error was one that seriously affect[ed] the fairness, integrity, or public reputation of judicial proceedings" (alteration in original) (citation and internal quotation marks omitted)). In its plain error analysis, the Court of Appeals, which considered itself bound by *Coleman*, stated that "[the] Court [in *Coleman*] held that the trial court's errors amounted to plain error and awarded a new trial even assuming arguendo that the 'entire record reveals overwhelming and uncontroverted evidence of guilt.' " *Galaviz-Torres*, 2014 WL 2993850, at *4 (quoting *Coleman*, __ N.C. App. at __, 742 S.E.2d at 352). However, the Court of Appeals in *Coleman* never determined that the evidence that had been presented against the defendant was "overwhelming and uncontroverted." Instead, the Court of Appeals in *Coleman* concluded that the defendant was entitled to plain error relief because the issue of whether he knew that the substance that he possessed was heroin was both sharply controverted and critical to the outcome reached at trial. *Coleman*, ___ N.C. App. at ___, 742 S.E.2d at 352. Instead of being "uncontroverted" and "overwhelmingly" in the State's favor, the evidence in *Coleman* reflected that the defendant told the investigating officers shortly after he was taken into custody that he did not know that the box contained heroin in addition to marijuana. Moreover, the State failed to elicit any direct evidence suggesting that the defendant's contention was untruthful. Finally, the prosecutor mistakenly argued to the jury that, even if the defendant "suspected" that the box contained heroin, "that is enough" to show the requisite guilty knowledge. ___ N.C. App. at ___, 742 S.E.2d at 352. As a result, given the presence of substantial evidence tending to show that the defendant did not possess the requisite guilty knowledge, coupled with the prosecutor's legally erroneous jury argument, the Court of Appeals concluded that the trial court's failure to instruct the jury in accordance with footnote four had a probable impact

on the jury's verdict and necessitated an award of appellate relief. *Id.* at ___, 742 S.E.2d at 352.

In the present case, by contrast, the State elicited a considerable amount of evidence indicating that defendant actually knew that he had possessed and transported cocaine. Among other things, the State presented evidence that defendant admitted that the substance found in the gift bag was cocaine and that he took investigating officers to the place where he had obtained the cocaine in question. Given that the record contained ample evidence tending to contradict defendant's claim that he did not know that he possessed or transported any controlled substance, we cannot say that any error that the trial court might have committed by failing to include the language in footnote four in its jury instructions had a probable impact on the jury's decision to convict defendant. The Court of Appeals' decision to the contrary rested on both a misreading of *Coleman* and a misapplication of the applicable standard of review.

Thus, we conclude that the trial court did not err, much less commit plain error, by failing to instruct the jury in accordance with the language in footnote four to N.C.P.I. Crim. 260.17 and N.C.P.I. Crim. 260.30 given that defendant's defense at trial did not implicate the concerns addressed by the language in that footnote. Instead, the language of the basic pattern instructions contained in N.C.P.I. Crim. 260.17 and N.C.P.I. Crim. 260.30 amply addressed the legal issues arising from defendant's contentions at trial. As a result, the decision of the Court of Appeals is reversed.

REVERSED.

TOWN OF MIDLAND v. WAYNE

[368 N.C. 55 (2015)]

TOWN OF MIDLAND
v.
DARRYL KEITH WAYNE, TRUSTEE, OR ANY SUCCESSORS IN TRUST, UNDER THE DARRYL KEITH WAYNE REVOCABLE TRUST AGREEMENT, AND ANY AMENDMENTS THERETO, DATED FEBRUARY 23, 2007

No. 458PA13

Filed 11 June 2015

1. Eminent Domain—contiguous properties—development plan—unity of ownership—vested right to complete subdivision

In a condemnation action, the owners of the undeveloped portions of a subdivision had a vested right to complete the subdivision in accordance with the pre-approved development plan. The owners—the named defendant and the limited liability company—owned contiguous properties subject to the vested, unified development plan, and Darryl Wayne had at least a modicum of interest in both properties. Therefore, the unity of ownership requirement was satisfied for the purpose of determining compensation.

2. Eminent Domain—vested right to complete subdivision—not separate property interest—enhanced value

In a condemnation action, the property owners' vested right to complete the subdivision was not a separate property interest from the real estate. Instead, it was a quality that enhanced the value of the property before the taking.

On discretionary review pursuant to N.C.G.S. § 7A 31 of a unanimous decision of the Court of Appeals, ___ N.C. App. ___, 748 S.E.2d 35 (2013), affirming in part and reversing in part orders entered on 23 March 2012 and 7 June 2012 by Judge C. W. Bragg in Superior Court, Cabarrus County, and remanding for additional proceedings. Heard in the Supreme Court on 10 September 2014.

Hartsell & Williams, P.A., by Andrew T. Cornelius and Brittany M. Love, for plaintiff-appellee.

Vandeventer Black LLP, by Norman W. Shearin, David P. Ferrell, and Ashley P. Holmes, for defendant-appellant.

NEWBY, Justice.

In this condemnation action we decide the existence of a vested right to develop a subdivision and the effect of that vested right on the questions of unity of ownership and damages. We hold that the owners of the undeveloped portions of the subdivision have a vested right to complete the subdivision in accordance with the pre-approved plan. Having a vested right to complete the subdivision means both owners of the remaining undeveloped property, the named defendant and the limited liability company, have interests affected by the condemnation of a portion of the subdivision, satisfying the unity of ownership requirement. The measure of damages is the difference between the value of the property before the taking and the value immediately afterwards. The vested right enhances the value of the property before the taking but is not a separate element of damages. Accordingly, we modify and affirm in part and reverse in part the decision of the Court of Appeals.

Defendant's predecessor in title, Darryl Keith Wayne ("Wayne"), owned two tracts of land totaling ninety acres ("Wayne Tracts").[1] Park Creek, LLC ("the LCC"), the majority of which is owned by Wayne, held the adjacent one hundred sixty acres. Together, Wayne and the LLC submitted a Customized Development Plan ("the 1997 plan") for a multiphase, two hundred fifty acre residential subdivision known as Park Creek ("Park Creek"). The Cabarrus County Planning and Zoning Commission approved the 1997 plan provided that the development met certain requirements. These requirements specified minimum lot sizes and established a certain percentage of the "high-income," two hundred home subdivision as open space. Wayne and the LLC developed the first two phases using some of the land owned by the LLC, installing water lines and other infrastructure designed and constructed to service the future phases as well. On or after 23 February 2007, Wayne conveyed his property to defendant, his revocable trust of which he is the trustee ("defendant"). By 2009 the first two development phases of Park Creek were substantially completed, representing roughly fifty percent of the subdivision, at a cost of approximately $4.6 million dollars. Most of the lots in the first two phases had been sold. At that time, the future phases of the subdivision, including one tract of about forty acres owned by the LLC ("LLC Tract") and the Wayne Tracts, remained mostly undeveloped. Since its inception defendant and the LLC have maintained the 1997 plan as required by the Town, and the legal effectiveness of the 1997 plan has never lapsed.

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1. The Wayne Tracts consist of a 74.75 acre parcel and a 15.11 acre parcel. The condemned three-acre easement crosses both parcels.

In February 2009 in Superior Court, Cabarrus County, the Town of Midland filed two separate condemnation actions against defendant, condemning three acres of the Wayne Tracts for a right-of-way and easement "to construct and operate a natural gas pipeline for the transmission and distribution of natural gas," "to construct and operate a fiber optic line," and "to obtain a temporary construction easement in order to construct the pipeline" ("the easement"). As required by statute, the Town deposited its estimated value and asked for a determination of just compensation. The Town did not name the LLC as a party or identify its tract in the condemnation actions, presumably because the easement did not cross any portion of the LLC property. Likewise, the Town did not specify the taking of the vested right to complete the subdivision as approved. The Town's condemnation actions contemplated taking only the three acres necessary for the easement.

Defendant filed an answer to each complaint, claiming the amount offered by the Town was insufficient and asking for a determination of just compensation.[2] In October 2011 defendant moved to consolidate the two actions for purposes of hearing all issues other than compensation. Defendant also moved to amend his answers to include additional issues for adjudication, particularly those addressing "the scope of the land affected by the taking and the Town's inverse condemnation of certain areas of [his] property outside the temporary and permanent easement areas."

The same day that defendant moved to consolidate the actions, the LLC moved to intervene in the actions, asserting that the easement affected the LLC Tract as well. The LLC stated that since its undeveloped land was part of Park Creek, "[t]he Court's determination of the area affected by the taking and disposition of [this action] may, as a practical matter, impair or impede [the LLC's] ability to protect its interest in the Subdivision rights in parcels of land which lie upon the Subdivision."[3]

On 27 October 2011, the trial court found that the two affected Wayne Tracts are adjacent to the LLC Tract and that Wayne "is the Trustee of Defendant and also the principal or exclusive owner of [the] LLC." The

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2. As permitted under the condemnation statutes, *see* N.C.G.S. § 40A-48 (2013), in June 2011 three commissioners determined that defendant should receive $220,000, representing just compensation for the property taken. The Town disagreed with the commissioners and requested a jury determination of value. Defendant also desires to have a jury decide just compensation.

3. The LLC also owns several unsold lots in the developed portion of Park Creek. The effect of the condemnation, if any, on the unsold developed lots is not a part of these proceedings.

trial court, however, denied the LLC's motion to intervene as untimely. The trial court noted that the LLC "can separately and adequately protect its interest by pursuing any separate action that may be available to it."[4] In the same order the trial court also consolidated the two condemnation actions for certain purposes[5] and allowed defendant to amend his answers: (1) "to assert a counterclaim to seek compensation for an inverse condemnation resulting from [the Town's] actions in connection with the pipeline outside the boundaries of the property described in the declaration of taking," and (2) to request that the court treat the Wayne tracts "as a single parcel with 'other adjoining parcels owned by Defendant or individuals or related entities to Defendant.' "

In his amended answers dated 1 November 2011, defendant counterclaimed that, while constructing the natural gas pipeline and fiber optic line, the Town's contractor transported equipment and maintained construction staging areas outside the easement boundaries without his consent. Defendant claimed that, as a result, "the Town has physically damaged and inversely condemned the Wayne Tracts outside and beyond the easement areas." Defendant reiterated his request that plaintiff pay him "just compensation for the taking of the Wayne Tracts." Additionally, defendant "reserve[d] the right to have the parcels to be condemned . . . and any other adjoining parcels owned by Defendant or individuals or related entities to Defendant treated as a single parcel for purposes of determining just compensation."

At the hearing for determination of issues under N.C.G.S. § 40A-47, defendant presented evidence that the easement's far-reaching effect, though perhaps unforeseen, decreases the net developable area of the subdivision property and impairs vital flexibility in its development. Defendant's expert asserted that the easement reduces road frontage on some lots, diminishes lot yield, adversely affects street designs and water line placement, shrinks or eliminates vegetative buffers, and reduces overall residential density. The expert noted that the easement mandates certain grade restrictions and includes other requirements such as buffer zones and set-offs. For example, before the easement

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4. It appears that the LLC attempted to assign its claim for damages to defendant. Later, the LLC initiated a separate action. In two separate orders dated 21 March 2012 and 1 June 2012, the trial court concluded that the LLC impermissibly assigned its claim for damages, thereby violating the intent and spirit of the trial court's denial of the motion to intervene. The trial court later granted a motion to consolidate the Town's condemnation actions against defendant and the action initiated by the LLC for the sake of judicial economy due to common questions of law and fact and the "virtually identical" issues involved.

5. Hereinafter, the consolidated condemnation actions are referred to in the singular.

took effect, any lots developed could extend onto a pre-existing utility easement; however, the new easement prevents development over itself, and its grading restrictions prevent the development of land used for the pre-existing utility easement as well. Moreover, according to defendant, the grading restrictions adversely affect the predetermined road network within the subdivision. Likewise, construction of the pipeline within the easement eliminated an existing buffer of mature woodlands, forcing defendant to plant a new vegetative buffer and further reducing the remaining developable land. The permanent effects of the easement, defendant argued, have made it economically unfeasible for him to develop the Wayne Tracts in accordance with the 1997 plan, will cause him to incur additional development costs, and will reduce the overall value of the remaining undeveloped lots in the subdivision.

In an order dated 21 March 2012, the trial court concluded as a matter of law that the Town had inversely condemned a portion of the Wayne Tracts situated outside the easement by maintaining staging areas during construction. In the same order the trial court found that "the Cabarrus County Planning & Zoning Commission approved a Customized Development Plan for the Subdivision which included the Wayne Tracts," and subsequently, "Wayne has maintained the Plan as required by Cabarrus County." Based on defendant's evidence, the trial court found "that the impact of the gas pipeline easements would reduce the developable area of the Wayne Tracts, reduce road frontage for some lots, reduce lot yield, reduce flexibility in development, including adversely affecting street designs and locations, reduce or eliminate some vegetative buffers, and reduce residential density." As a result, "[t]he installation of the gas pipeline . . . reduced the net developable area available in the Wayne Tracts," making "it no longer economically feasible for Wayne to develop the Wayne Tracts in accordance with the Plan." The trial court further concluded that the easement "substantially interfere[d] with the elemental property rights in the Wayne Tracts, and thereby diminished the fair market value of the entire Wayne Tracts." As a matter of law, the trial court stated that "[t]he decrease in developable land and loss of density resulting from [the easement] has had a significant adverse impact on Wayne's rights to develop the Subdivision in accordance with the Plan." Moreover, on the date the easement was taken, "the Plan was valid, remained in effect, and recognized by Cabarrus County." Therefore, the trial court concluded as a matter of law that the easement "resulted in a regulatory taking of the Wayne Tracts."

In a separate order issued the same day the trial court denied defendant's request that the Wayne Tracts and the adjacent property

owned by the LLC be considered as one unified tract. The trial court determined that establishing a unified tract for the purpose of assessing condemnation damages requires " 'some unity of ownership . . . when separate parcels of land are involved.' " Relying on our decision in *Board of Transportation v. Martin*, 296 N.C. 20, 28, 249 S.E.2d 390, 396 (1978), the trial court noted that " 'a parcel of land owned by an individual and an adjacent parcel of land owned by a corporation of which that individual is the sole or principal shareholder cannot be treated as a unified tract for the purpose of assessing condemnation damages.' " The trial court determined as a matter of law that *Martin* controls here "where Wayne owns the Wayne Tracts and Park Creek, LLC, in which Mr. Wayne is majority owner, owns the adjoining land." Therefore, no unity of ownership existed between the Wayne Tracts and the LLC Tract, limiting the area affected by the taking for purposes of compensation to the Wayne Tracts.

Defendant successfully moved the trial court to amend its orders to recognize that he based his unity of ownership argument on his vested right to develop land "upon the valid approval . . . of . . . a phased development plan, giving land owners the right to undertake and complete the development and use of said property under the terms and conditions of the . . . plan" and on his common law vested rights to develop his land based on his "substantial expenditures of money, time, labor or energy in a good faith reliance on a government approved land use." In its amended order the trial court found that it was "no longer economically feasible for Wayne to construct roads on the Wayne Tracts in accordance with the Plan," thus depriving him of "all practical uses of the Wayne Tracts." The Town's condemnation action, according to the trial court, has "had a significant adverse impact on Wayne's statutory and common law vested rights to develop the Subdivision in accordance with the Plan" and has resulted "in a regulatory taking of the Wayne Tracts." Nonetheless, the trial court once more found that, despite defendant's vested rights, the decision in *Martin* precludes finding unity of ownership between defendant and the LLC.

Before the damages phase of the trial began, both defendant and the Town entered interlocutory notices of appeal. *Town of Midland v. Wayne*, ___ N.C. App. ___, ___, 748 S.E.2d 35, 38 (2013). The Town appealed the trial court's ruling that maintaining the construction staging areas resulted in an inverse condemnation and that a separate and complete taking of the Wayne Tracts occurred. Defendant cross-appealed the trial court's conclusion that "no unity of ownership existed as to the contiguous tracts of land owned by Wayne and Park Creek, LLC."

First, addressing the Town's appeal, the Court of Appeals affirmed the trial court's conclusion that the construction staging areas located outside the easement constituted a temporary inverse taking, *id.* at ___, 748 S.E.2d at 38-39, and the Town has not sought further review of this issue. Thus, the decision of the Court of Appeals as to this issue is final.

Then, the Court of Appeals reversed the trial court's conclusion that the Town's condemnation action constituted a "regulatory" or separate and complete taking of the Wayne Tracts. *Id.* at ___, 748 S.E.2d at 39-40. The Court of Appeals first observed the absence of findings in the trial court's order to support its conclusion that the eighty-seven acres of the Wayne Tracts remaining outside the easement retain "no 'practical use . . . or reasonable value.' " *Id.* at ___, 748 S.E.2d at 39-40. Noting that " 'a taking does not occur simply because government action deprives an owner of previously available property rights,' " *id.* at ___, 748 S.E.2d at 39, the Court of Appeals concluded that the trial court erred in finding a separate and complete taking of the Wayne Tracts because the trial court's findings suggested that "the Wayne Tracts could still be developed for residential use, though not in accordance with the 1997 Plan," *id.* at ___, 748 S.E.2d at 40 (citing *Finch v. City of Durham N.C.*, 325 N.C. 352, 364, 366, 384 S.E.2d 8, 15, 16 (1989)).

Next, the Court of Appeals addressed defendant's argument "based on the trial court's findings that defendant had a 'vested right' in the 1997 Plan." *Id.* at ___, 748 S.E.2d at 40. Pointing to the Town's complaints which identified specific portions of the Wayne Tracts as the " 'property [it] sought to acquire,' " as required by N.C.G.S. § 40A-20, the Court of Appeals determined that "where a condemner has taken a portion of a tract, 'evidence regarding the adverse effects of the condemnation on the remaining property is admissible, but such effects are not separate items of damages.' " *Wayne*, *id.* at ___, 748 S.E.2d at 40 (quoting *Bd. of Transp. v. Jones*, 297 N.C. 436, 439, 255 S.E.2d 185, 187-88 (1979) (citation and internal quotation marks omitted)). Rather than requiring "separate" damages for the loss of defendant's "vested rights," the Court of Appeals reasoned the compensation awarded in exchange for the easement may account for any "diminution in [market] value of the Wayne Tracts." *Id.* at ___, 748 S.E.2d at 40 ("Defendant is not entitled to additional compensation, beyond the diminution in value as provided in N.C. Gen. Stat. § 40A-64, based on the loss of the right to develop the property in a certain way.").

The Court of Appeals lastly addressed defendant's unity of ownership argument. Relying on our decision in *Martin*, the Court of Appeals affirmed the trial court's conclusion that no unity of ownership existed

between the Wayne Tracts and the LLC Tract for the purpose of determining compensation. *Wayne*, *id.* at ___, 748 S.E.2d at 41. In so holding, the Court of Appeals noted that defendant, "*individually*, has no interest in the tract owned by Park Creek, LLC," but "merely owns an interest in the limited liability company which owns the tract." *Id.* at ___, 748 S.E.2d at 41. Because defendant has secured the advantages of the LLC as a liability shield, the Court of Appeals concluded that he cannot now request that the court disregard it. *Id.* at ___, 748 S.E.2d at 41-42. Ultimately, given its analysis, the Court of Appeals found a determination of the existence of a vested right to be unnecessary. *Id.* at ___ n.2, 748 S.E.2d at 40 n.2.

We allowed defendant's petition for discretionary review. *Town of Midland v. Wayne*, 367 N.C. 292, 753 S.E.2d 664 (2014). On appeal, defendant reasserts that a taking of his vested right to develop the remainder of Park Creek under the 1997 plan has occurred, requiring the Town to identify it in the complaint and compensate for the vested right as an additional, separate element of damages. Moreover, defendant argues that the vested right to develop these contiguous parcels according to that plan satisfies the unity of ownership required between the Wayne Tracts and the LLC Tract. The Town first responds that defendant failed to meet the criteria for a statutory vested right under N.C.G.S. § 153A-344.1 because the statute terminated any such vested right in defendant two years after approval of the 1997 plan, unless specifically extended by the county. See N.C.G.S. § 153A-344.1(d)(1)-(2) (2013). The Town further contends that defendant failed to establish a common law vested right because substantial expenditures had not been made on the undeveloped tracts of the subdivision. As to whether the Town must identify and compensate for any interference with a vested right, the Town argues that the complaints sufficiently identify the property rights and tracts of land affected by the taking. Finally, the Town asserts the Court of Appeals correctly held that there was no unity of ownership as to the Wayne Tracts and the LLC Tract.

"[T]he power of eminent domain[ ] is one of the prerogatives of a sovereign state. . . . Its exercise, however, is limited by the constitutional requirements of due process and payment of just compensation for property condemned." *Dep't of Transp. v. M.M. Fowler, Inc.*, 361 N.C. 1, 4, 637 S.E.2d 885, 889 (2006) (citations and quotation marks omitted). *See* N.C. Const. art. I, § 19 ("No person shall be . . . deprived of his . . . property, but by the law of the land."); *see also* U.S. Const. amend. XIV, § 1 ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . ."). Due process requires that the

property right taken and the owner of the right be identified in the condemnation complaint. *See Barnes v. N.C. State Highway Comm'n*, 250 N.C. 378, 387, 109 S.E.2d 219, 227 (1959) (noting the government's duty to make just compensation to the owner of the property appropriated). Just compensation means "that persons being required to provide land for public projects are put in the same financial position as prior to the taking." *Dep't of Transp. v. Rowe*, 353 N.C. 671, 679, 549 S.E.2d 203, 210 (2001) (citations omitted), *cert. denied*, 534 U.S. 1130, 122 S. Ct. 1070, 151 L. Ed. 2d 972 (2002).

"If there is a taking of less than the entire tract, the measure of compensation is the greater of either (i) the amount by which the fair market value of the entire tract immediately before the taking exceeds the fair market value of the remainder immediately after the taking; or (ii) the fair market value of the property taken." N.C.G.S. § 40A-64(b) (2013); *see also Fowler*, 361 N.C. at 5, 637 S.E.2d at 889 (defining just compensation in condemnation proceedings instituted by the Department of Transportation as the difference between the "before value" and the "after value" (citing N.C.G.S. § 136-112(1) (2005))).[6] In weighing before and after values, a determination of the property's remaining fair market value considers the property's worth in light of its " 'availability for all valuable uses.' " *Fowler*, 361 N.C. at 6, 637 S.E.2d at 890 (quoting *State v. Johnson*, 282 N.C. 1, 14, 191 S.E.2d 641, 651 (1972) (citation and quotation marks omitted)).

[1] We must first determine the property interest affected by the condemnation action, identifying the property right taken and its owner. After hearing evidence, the trial court determined that defendant had a vested right to develop the property under the 1997 plan. We agree. While the trial court found a vested right based on both a common law and statutory analysis, we confine our review to the common law.

At common law, government may not deprive a landowner of his right to continue with an approved use of his land when, in good faith and in reliance upon valid governmental approval, he makes substantial expenditures or incurs significant contractual obligations towards that approved use. *Town of Hillsborough v. Smith*, 276 N.C. 48, 55, 170 S.E.2d 904, 909 (1969). "Once [a developer] makes substantial expenditures in good-faith reliance on the approval, he has a vested right to carry out

6. The valuation approach used in subdivision 40A-64(b)(i) is known as the "before and after method." While subdivision 40A-64(b)(ii) allows valuation to be computed based on "the fair market value of the property taken," it appears, here, that the before and after method will result in the greater recovery.

the project as approved." *River Birch Assocs. v. City of Raleigh*, 326 N.C. 100, 112, 388 S.E.2d 538, 544-45 (1990) (citing *Smith*, 276 N.C. at 48, 170 S.E.2d at 904). "[A] determination of the 'vested rights' issue requires resolution of questions of fact, including reasonableness of reliance, existence of good or bad faith, and substantiality of expenditures." *Godfrey v. Zoning Bd. of Adjust.*, 317 N.C. 51, 63, 344 S.E.2d 272, 279 (1986) (citations omitted).

The trial court's findings of fact sufficiently support its conclusion that the Town's condemnation action interfered with defendant's vested right to develop the future phases of the subdivision under the 1997 plan. Defendant's approved, multiphase residential development plan—a preliminary planning followed by phased implementation—is consistent with the inherent nature of residential development. Defendant reasonably and in good faith relied on that plan because it has never lapsed in legal effect. *See River Birch*, 326 N.C. at 111, 388 S.E.2d at 544 ("[T]he preliminary plan is a formal document that constitutes the most critical step in the subdivision approval process."); *Dep't of Transp. v. Nelson Co.*, 127 N.C. App. 365, 368-69, 489 S.E.2d 449, 451 (1997) (acknowledging the unity of use component inherent in the multiphase commercial development process). As found by the trial court, defendant in good faith reliance made substantial expenditures of money, time, and labor based on the 1997 plan, thus supporting his common law vested right to develop the subdivision in accordance with the plan. The Town's argument that the expenditures were directed primarily to the developed first two phases of Park Creek fails to recognize the unified nature of the 1997 plan and the benefit of the expenditures to the entire subdivision.

This vested right determination also informs our decision as to which parties are affected by the taking. We agree with defendant's argument that the common law vested right to develop the contiguous parcels according to the 1997 plan helps satisfy the unity of ownership required between the Wayne Tracts and LLC Tract. Under section 40A-67, "all contiguous tracts of land that are in the same ownership and are being used as an integrated economic unit shall be treated as if the combined tracts constitute a single tract" for the purpose of determining just compensation in an eminent domain proceeding. N.C.G.S. § 40A-67 (2013). Three factors generally determine whether contiguous tracts of land should be considered as a whole: (1) "unity of ownership" between the parcels; (2) "unity of use" between the parcels; and (3) "physical unity" between the parcels. *Barnes*, 250 N.C. at 384, 109 S.E.2d at 224-25. " 'Under certain circumstances the presence of all these unities is not essential.' " *Martin*, 296 N.C. at 25, 249 S.E.2d at 394 (quoting *Barnes*,

250 N.C. at 384, 109 S.E.2d at 225). Though some unity of ownership is required, a party need not " 'have the same quantity or quality of interest or estate in all parts of the tract.' " *Id.* Among the three factors, the one " 'given greatest emphasis' " and most often found " 'controlling in determining whether land is a single tract is unity of use.' " *Martin*, 296 N.C. at 25-26, 249 S.E.2d at 394 (quoting *Barnes*, 250 N.C. at 384-85, 109 S.E.2d at 225); *see Nelson*, 127 N.C. App. at 368, 489 S.E.2d at 451 (concluding that, if a completed, commercially developed office park would be considered an "integrated economic unit," a partially completed office park meets that requirement as well). The connecting parcels must "be presently, actually, and permanently used in such a manner that the enjoyment of the parcel taken is reasonably and substantially necessary to the enjoyment of the remaining parcel." *Martin*, 296 N.C. at 29, 249 S.E.2d at 396.

Here the undeveloped tracts of Park Creek are contiguous, satisfying the "physical unity" requirement. Most importantly, as we have said, is "unity of use." Not only are the Wayne Tracts and LLC Tract part of the same subdivision, they are subject to the same vested right to be developed pursuant to the 1997 plan. Defendant and the LLC each have an identifiable interest in the lands of the other; the Wayne Tracts and the LLC Tract are indispensable parts of the unified project. Consequently, the easement area taken is "reasonably and substantially necessary to the enjoyment" of both the Wayne Tracts and the LLC Tract. *Id.* The unity of use is controlling and being a part of a vested development plan is the strongest evidence of unity of use. Nonetheless, a modicum of unity of ownership must also be present. *Cf. City of Winston-Salem N.C. v. Yarbrough*, 117 N.C. App. 340, 345, 451 S.E.2d 358, 362 (1994), *cert. denied*, 340 N.C. 110, 456 S.E.2d 311 (1995) (concluding that unity of ownership exists between a husband and a wife, each owning separate tracts, because of the inchoate dower interest of the wife in the husband's property). Given the significance of the joint vested right to develop Park Creek, we hold that the unity of ownership is satisfied here, where Wayne is the trustee of his revocable trust owning the Wayne Tracts and has the controlling interest in the LLC.

The Court of Appeals and the trial court relied heavily on *Martin* to conclude that unity of ownership did not exist between defendant and the LLC. Each court believed *Martin* involved one tract owned by an individual and an adjacent tract owned by a corporation of which the individual was the sole shareholder. The facts and holding of *Martin*, however, are far more nuanced than that analysis implies. First, title to the adjacent property sought to be included in the condemnation in *Martin* was not titled in the corporation but in a distinct, unrelated

entity, a bankruptcy trustee. *Martin*, 296 N.C. at 29-30, 249 S.E.2d at 396-97. Further, and most importantly, there was no unity of use; the adjacent parcel was not a part of an approved development project. Though the owner in *Martin* may have intended some future development of the undeveloped parcel in conjunction with the adjacent developed tract, unlike here, that site had not received an approved, unified development plan encompassing the entire property. *Id.* at 30, 249 S.E.2d at 397.

[2] Finally, we consider the measure of damages. Defendant argues, and the trial court determined, that the loss of the vested right is a separate "property interest" for which he is entitled to compensation. We do not agree. The vested right is not a property interest separate from the real estate to which it attaches; it is, instead, a unique quality of that land which enhances the value. Generally, an undeveloped parcel of land for which development has been approved is significantly more valuable than the same parcel without the development rights. As such, it is an important feature of the condemned land and not a separate, compensable property right.

According to defendant and the trial court, the Town's condemnation undermines defendant's vested right to implement an approved plan to develop the future phases of the subdivision in harmony with the already completed development. Defendant incurred substantial expense in good faith reliance on the 1997 plan, including, *inter alia*, installation of infrastructure, preparation of plats and surveys, and marketing the subdivision. The significant adverse effects of the easement and resulting losses in developable area, residential density and flexibility in the development, and the shifting of shared costs prevent defendant from completing the 1997 plan in accordance with his vested right.

Nonetheless, the statute establishes that the measure of damages is simply the difference between the value immediately before the taking and that immediately afterwards. N.C.G.S. § 40A-64(b). The fact that the property is subject to the vested right to be developed under the 1997 plan will be the significant factor in determining the value before the taking. During the damages stage of trial, the jury may believe the evidence presented, as did the trial court, that the condemnation has virtually eliminated the use of the property as a residential subdivision. If so, the jury's ultimate valuation will reflect the value of the property before the taking as an approved residential development and the value after the taking as acreage without that significant benefit. Regardless, the remaining undeveloped portion of Park Creek retains some value. Thus, the statutory before and after method will provide defendant and

the LLC just compensation for the taking, including any loss of the ability to develop the subdivision under their vested right.

In sum, we hold that defendant and the LLC have a vested right to complete Park Creek pursuant to the 1997 plan. Since defendant and the LLC own contiguous properties which are subject to a vested, unified development plan adversely affected by the condemnation, and Wayne has a modicum of interest in both, unity of ownership exists. The Court of Appeals' decision as to the lack of unity of ownership is reversed. Regarding the measure of damages, loss of a vested right is not a separate element of recovery but a quality of the property. The value of the property before the taking will reflect the enhancement resulting from the vested right as the value afterward will reflect the diminution or destruction of the right. As to this issue, the Court of Appeals' decision is modified and affirmed.

Accordingly, the decision of the Court of Appeals is modified and affirmed in part and reversed in part. This matter is remanded to the Court of Appeals for further remand to the Superior Court, Cabarrus County, to determine at trial the damages arising from the condemnation and for further proceedings not inconsistent with this opinion.

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

Justice ERVIN did not participate in the consideration or decision of this case.

JORGE TOVAR-MAURICIO, EDEMIAS DELEON MORALES, MARIO M. TOVAR, RANULFO DELEON VASQUEZ, BERNABE FRANCISCO CALIXTO, TOMAS MARTINEZ GUERRERO AND GABRIEL DOMINGUEZ-CONTRERA, EMPLOYEES

v.

T.R. DRISCOLL, INC., EMPLOYER,

GENERAL CASUALTY INSURANCE COMPANY AND CAROLINAS ROOFING AND SHEET METAL CONTRACTORS SELF-INSURED FUND, CARRIERS

No. 9A14

Filed 11 June 2015

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 768 S.E.2d 550 (2014), affirming an opinion and award filed on 21 December 2012 by the North Carolina Industrial Commission. On 18 December 2014, the Supreme Court allowed petitions for discretionary review of additional issues filed by defendants General Casualty Insurance Company and Carolinas Roofing and Sheet Metal Contractors Self-Insured Fund. Heard in the Supreme Court on 21 April 2015.

Diener Law, P.A., by Amanda Gladin-Kramer, Russell W. Johnson, and Richard A. Diener, for plaintiff-appellees.

Orbock Ruark & Dillard, PC, by Roger L. Dillard, Jr. and Jessica E. Lyles, for defendant-appellee T.R. Driscoll, Inc.

Teague Campbell Dennis & Gorham, LLP, by Brian M. Love and George H. Pender, for defendant-appellant/appellee General Casualty Insurance Company.

Goodman McGuffey Lindsey & Johnson, LLP, by Adam E. Whitten and Michael A. Cannon, for defendant-appellant/appellee Carolinas Roofing and Sheet Metal Contractors Self-Insured Fund.

PER CURIAM.

As to the appeal of right based on the dissenting opinion, we affirm the majority decision of the Court of Appeals. We conclude that the petition for discretionary review as to additional issues was improvidently allowed.

AFFIRMED; DISCRETIONARY REVIEW IMPROVIDENTLY ALLOWED.

MORGAN v. MORGAN

[368 N.C.69 (2015)]

DAVID M. MORGAN, EMPLOYEE
v.
MORGAN MOTOR COMPANY OF ALBEMARLE, EMPLOYER

BRENTWOOD SERVICES, INC., SERVICING AGENT FOR THE
NORTH CAROLINA AUTO DEALERS ASSOCIATION SELF-INSURER'S FUND

No. 21A14

Filed 11 June 2015

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 752 S.E.2d 677 (2013), affirming an opinion and award filed on 27 August 2012 by the North Carolina Industrial Commission. Heard in the Supreme Court on 22 April 2015.

Poisson, Poisson & Bower, PLLC, by E. Stewart Poisson and Fred D. Poisson, Jr., for plaintiff-appellant.

Teague, Campbell, Dennis & Gorham, L.L.P., by Bruce A. Hamilton and Carla M. Cobb, for defendant-appellees.

PER CURIAM.

AFFIRMED.

STATE OF NORTH CAROLINA
v.
GREGORY ELDER

No. 41A14

Filed 11 June 2015

Search and Seizure—warrantless search—residence—civil domestic violence protective order

The trial court erred in a manufacturing a controlled substance, maintaining a place to keep controlled substances, and possession of drug paraphernalia case by denying defendant's motion to suppress evidence discovered during the search of his residence. N.C.G.S. § 50B-3(a)(13) does not authorize the district court to order a search of defendant's residence under a civil domestic violence protective order. The search of defendant's home, conducted without a warrant or any articulable exception to the warrant requirement, violated defendant's fundamental rights protected by the Federal and State Constitutions.

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 753 S.E.2d 504 (2014), vacating a judgment entered on 17 December 2012 by Judge Linwood O. Foust in Superior Court, Mecklenburg County, and remanding for entry of an order allowing defendant's motion to suppress. Heard in the Supreme Court on 12 January 2015.

Roy Cooper, *Attorney General*, *by Ward Zimmerman*, *Special Deputy Attorney General*, *for the State-appellant.*

Michele Goldman for defendant-appellee.

NEWBY, Justice.

In this case we must determine whether N.C.G.S. § 50B-3 authorized the district court to order a search of defendant's person, vehicle, and residence pursuant to an ex parte civil Domestic Violence Order of Protection ("DVPO") and whether the ensuing search violated defendant's constitutional rights. Because the district court exceeded its statutory authority by ordering the search, and because the warrantless search lacked a basis in probable cause and no exigent circumstances were present, we modify and affirm the decision of the Court of Appeals.

On 23 September 2010, at the request of defendant's then-wife, the district court entered an ex parte DVPO against defendant under N.C.G.S. § 50B-3. In the DVPO the district court found that:

> [d]efendant threatened to get some gasoline and torch their son's pre-school, her house and her sister's house. He also stated that "I'm gonna get you all," and that "you won't [expletive deleted] stop me, the police won't [expletive deleted] stop me." He has a history of substance abuse and mental illness. He has also made threats to anyone attempting to go into the marital residence.

Concluding, *inter alia*, that defendant had committed acts of domestic violence in the past and that he continued to present a danger of future violence, the court ordered defendant to surrender his firearms, ammunition, and gun permits, as provided in N.C.G.S. § 50B-3.1. Relying on subdivision 50B-3(a)(13), which authorizes the court to order "any additional prohibitions or requirements the court deems necessary to protect any party or any minor child," the court further ordered in the DVPO that "[a]ny Law Enforcement officer serving this Order shall search the Defendant's person, vehicle and residence and seize any and all weapons found." Notably, the court made no findings or conclusions that probable cause existed to search defendant's property or that defendant even owned or possessed a weapon.

After several attempts, officers served the DVPO on defendant at his residence three days after it was issued. Officers knocked on defendant's door for fifteen minutes before he came outside. Defendant then closed the front door of the house and locked the door. An officer took defendant's keys from his pocket, and officers entered the house to execute the search for weapons ordered in the DVPO. Before the search began, officers arrested and handcuffed defendant under a valid arrest warrant for communicating threats. Once inside defendant's home officers smelled marijuana and followed the odor to the basement, where they found a marijuana growing operation. Defendant was charged with manufacturing a controlled substance, maintaining a place to keep controlled substances, and possession of drug paraphernalia.

On 8 October 2012, defendant filed a pretrial motion to suppress the evidence discovered during the search of his residence. He contended that the district court did not have statutory authority to order a search under the DVPO and that the search violated his constitutional rights because "the police had neither reasonable suspicion nor probable cause to search his home and no exceptions to the fourth amendment existed."

The Superior Court, Mecklenburg County denied defendant's motion to suppress, and defendant pled guilty to all three charges, reserving his right to appeal the denial of his motion to suppress.

A divided panel of the Court of Appeals reversed the superior court's ruling, vacated the judgment entered upon defendant's guilty plea, and remanded for entry of an order allowing the motion to suppress. *State v. Elder*, ___ N.C. App. ___, ___, 753 S.E.2d 504, 513 (2014). The majority held, *inter alia*, that the relevant DVPO statutes, when read *in pari materia*, do not authorize the district court to order a general search of defendant's person, vehicle, and residence for weapons. *Id.* at ___, 753 S.E.2d at 510. The Court of Appeals further held that the ex parte DVPO was not a de facto search warrant because it contained no findings of probable cause and that no exigent circumstances justified a warrantless search; moreover, the majority found that no exigent circumstances existed to justify a "protective sweep" of the home. *Id.* at ___, 753 S.E.2d at 510-12. Therefore, the search violated defendant's rights under the Federal and State Constitutions. *Id.* The dissent argued that section 50B-3, when read broadly, authorizes the district court to order a search for weapons under a DVPO. ___ N.C. App. at ___, 753 S.E.2d at 513 (Bryant, J., dissenting). The State filed a notice of appeal based on the dissenting opinion.

Our General Assembly enacted the Domestic Violence Act, N.C.G.S. Chapter 50B, "to respond to 'the serious and invisible problem' of domestic violence." *Augur v. Augur*, 356 N.C. 582, 591, 573 S.E.2d 125, 132 (2002) (citation omitted). Subsection 50B-3(a) states that if a court finds a defendant committed an act of domestic violence, the court must grant a DVPO "restraining the defendant from further acts of domestic violence." N.C.G.S. § 50B-3(a) (2013). The statute then lists thirteen types of relief that the court may order in a DVPO. *Id.* The first twelve are specific prohibitions or requirements imposed on a party to the DVPO. The last type of relief is a catch-all provision that authorizes the court to order "*any* additional prohibitions or requirements the court deems necessary to protect any party or any minor child." N.C.G.S. § 50B-3(a)(13) (emphasis added).

We disagree with the State's contention that the General Assembly intended a broad interpretation of the word "any." The plain language of section 50B-3 does not authorize courts to order law enforcement to search a defendant's person, vehicle, or residence under a DVPO. *See Lemons v. Old Hickory Council, Boy Scouts of Am., Inc.*, 322 N.C. 271, 276, 367 S.E.2d 655, 658 (1988) ("When the language of a statute is clear and unambiguous, there is no room for judicial construction, and the courts must give it its plain and definite meaning." (citations omitted)).

The word "any" in the catch-all provision modifies "additional prohibitions or requirements," N.C.G.S. § 50B-3(a)(13), and this provision follows a list of twelve other *prohibitions or requirements* that the judge may impose *on a party* to a DVPO, *id.* § 50B-3(a)(1)-(12). For example, the court may prohibit a party from harassing the other party or from purchasing a firearm, and it may require a party to provide housing for his or her spouse and children, to pay spousal and child support, or to complete an abuser treatment program. *Id.* § 50B-3(a)(3), (6), (7), (9), (11), (12). It follows, then, that the catch-all provision limits the court to ordering a party to act or refrain from acting; the provision does not authorize the court to order law enforcement, which is not a party to the civil DVPO, to proactively search defendant's person, vehicle, or residence.

Not only is this interpretation demanded by the plain language of the statute, but it is consistent with the protections provided by the Federal and State Constitutions. *See Smith v. Keator*, 285 N.C. 530, 534, 206 S.E.2d 203, 206 (noting that when possible, courts should interpret statutes in a manner consistent with our constitutions), *appeal dismissed*, 419 U.S. 1043, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974). The Federal and State Constitutions protect fundamental rights by limiting the power of the government. Yet under the State's broad interpretation here, district courts would have seemingly unfettered discretion to order a broad range of remedies in a DVPO so long as the judge believes they are necessary for the protection of any party or child. This interpretation contravenes the Fourth Amendment to the United States Constitution and Article I, Section 20 of the North Carolina Constitution.

The Fourth Amendment, made applicable to the states through the Fourteenth Amendment, protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV, XIV. Though Article I, Section 20 of the North Carolina Constitution contains different language, it provides the same protection against unreasonable searches and seizures. *State v. Arrington*, 311 N.C. 633, 643, 319 S.E.2d 254, 260 (1984) (citation omitted). Subject to a few well-delineated exceptions, the constitutions prohibit officers from invading the home without a valid warrant based on probable cause. *State v. Allison*, 298 N.C. 135, 141, 257 S.E.2d 417, 421 (1979) (noting that warrant not required when exigent circumstances and probable cause exist); *State v. Little*, 270 N.C. 234, 238, 154 S.E.2d 61, 65 (1967) (recognizing consent as an exception to the warrant requirement). The United States Supreme Court has explained:

> An essential purpose of a warrant requirement is to protect privacy interests by assuring citizens subject to a search or seizure that such intrusions are not the random or arbitrary acts of government agents. A warrant assures the citizen that the intrusion is authorized by law, and that it is narrowly limited in its objectives and scope. A warrant also provides the detached scrutiny of a neutral magistrate, and thus ensures an objective determination whether an intrusion is justified in any given case.

Skinner v. Ry. Labor Execs.' Ass'n, 489 U.S. 602, 621-22, 109 S. Ct. 1402, 1415-16, 103 L. Ed. 2d 639, 663 (1989) (citations omitted).

A search unsupported by a warrant or probable cause can be constitutional when the " 'special needs' " of the State, " 'beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.' " *Griffin v. Wisconsin*, 483 U.S. 868, 873, 107 S. Ct. 3164, 3168, 97 L. Ed. 2d 709, 717 (1987) (citation omitted). The United States Supreme Court has limited this exception to circumstances in which "the privacy interests implicated by the search are minimal, and where an important governmental interest furthered by the intrusion would be placed in jeopardy by" requiring a warrant and probable cause. *Skinner*, 489 U.S. at 624, 109 S. Ct. at 1417, 103 L. Ed. 2d at 664 (special need to assure railroad employees operating trains are not under influence of drugs or alcohol); *see also*, *e.g.*, *Griffin*, 483 U.S. at 873-74, 107 S. Ct. at 3168, 97 L. Ed. 2d at 717-18 (special need to supervise and search probationers); N*ew Jersey v. T.L.O.*, 469 U.S. 325, 341, 105 S. Ct. 733, 742, 83 L. Ed. 2d 720, 734 (1985) (special need to deter drug use in public schools).

While domestic violence is certainly a significant problem and the State's interest in protecting victims from domestic violence is vital, the facts of this case do not justify a departure from the usual warrant and probable cause requirements. Defendant's fundamental right to privacy was paramount because his home is "protected by the highest constitutional threshold." *State v. Grice*, 367 N.C. 753, 760, 767 S.E.2d 312, 318 (2015). Moreover, it was not impracticable for officers to obtain a search warrant if they had a reasonable basis to believe defendant possessed weapons that posed an imminent danger. An ex parte DVPO that contains no indication that weapons are present simply does not implicate the same concerns as other cases in which the Supreme Court has found a special need to circumvent the warrant and probable cause requirements. Therefore, by requiring officers to conduct a search of

defendant's home under sole authority of a civil DVPO without a warrant or probable cause, the district court's order violated defendant's constitutional rights.

Accordingly, we hold that in interpreting the statute according to its specific terms, as well as in a manner consistent with the Federal and State Constitutions, N.C.G.S. § 50B-3(a)(13) does not authorize the district court to order a search of defendant's residence under a civil DVPO. Furthermore, the search of defendant's home, conducted without a warrant or any articulable exception to the warrant requirement, violated defendant's fundamental rights protected by the Federal and State Constitutions. Therefore, the superior court should have granted defendant's motion to suppress, and the decision of the Court of Appeals is modified and affirmed.

MODIFIED AND AFFIRMED.

STATE OF NORTH CAROLINA
v.
TIYOUN JIMEK JACKSON

No. 183A14

Filed 11 June 2015

Search and Seizure—initial investigatory stop—neighborhood known for drugs

The unchallenged findings of fact made by the trial court sufficiently established that a Greensboro police officer had reasonable suspicion to conduct a brief investigatory stop of defendant. Being mindful of the dangers of making the simple act of walking in one's own neighborhood a possible indication of criminal activity, the Supreme Court noted that defendant stood at 9:00 p.m. in a specific location known for hand-to-hand drug transactions that had been the site of many narcotics investigations, and that defendant and another man twice split up and walked in opposite directions upon seeing a marked police vehicle approach.

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 758 S.E.2d 39 (2014), reversing an order entered on 10 January 2013 by Judge Christopher W.

Bragg and vacating a judgment entered on 7 January 2013 by Judge A. Robinson Hassell, both in Superior Court, Guilford County. Heard in the Supreme Court on 19 March 2015.

Roy Cooper, *Attorney General*, *by Derrick C. Mertz*, *Assistant Attorney General*, *for the State-appellant.*

Staples S. Hughes, *Appellate Defender*, *by Constance E. Widenhouse*, *Assistant Appellate Defender*, *for defendant-appellee.*

HUDSON, Justice.

Defendant Tiyoun Jimek Jackson was stopped and searched on 9 April 2012 by Officer Timothy Brown of the Greensboro Police Department outside a shop known for drug activity. Based on evidence obtained as a result of this stop, defendant was indicted for possession of a firearm by a felon, possession of a firearm with an altered serial number, and conspiracy to possess with intent to sell or deliver marijuana. Defendant moved to suppress the evidence obtained as a result of the initial stop on the basis that Officer Brown lacked reasonable suspicion to conduct an investigatory stop of defendant. The trial court denied this motion and the Court of Appeals reversed. Because we conclude that the trial court's unchallenged findings of fact establish that Officer Brown possessed reasonable suspicion to stop defendant, we now reverse the decision of the Court of Appeals.

FACTS AND PROCEDURAL HISTORY

On the evening of 9 April 2012, Officer Timothy Brown was assigned to patrol the area of Greensboro surrounding Kim's Mart, a shop known to police, including Officer Brown personally, as the site of frequent hand-to-hand drug transactions. At approximately 9:00 p.m., as Officer Brown approached the store in his marked patrol vehicle, he witnessed defendant standing near the store's newspaper dispenser with another individual named Curtis Benton. Upon seeing the police vehicle, defendant and Benton dispersed, with defendant walking east into Kim's Mart and Benton walking in the opposite direction to the west.

Officer Brown continued down the road past Kim's Mart, made a U-turn, and started back toward Kim's Mart. As he approached the store a second time, he saw that defendant and Benton had returned and were again standing in front of Kim's Mart, approximately twenty feet from where Officer Brown first saw them. For a second time, defendant and Benton separated and began walking away from each other in opposite

directions. As defendant walked by Officer Brown's patrol car, Officer Brown stopped defendant to ask him about drug activity; he then told defendant to place his hands on the car so he could frisk defendant for weapons. Officer Brown then asked defendant for consent to search his person, and defendant agreed. As Officer Brown was patting down defendant, defendant placed a loaded handgun on the hood of the patrol car and told Brown that he had found the weapon in the woods two weeks earlier. Officer Brown placed defendant under arrest and handcuffed him. A separate search of Benton yielded marijuana packaged in a number of small plastic bags.

Based on the evidence obtained from the stops of defendant and Benton, including the handgun seized from defendant and the marijuana and plastic bags seized from Benton, defendant was indicted on 11 June 2012 for possession of a firearm by a felon, possession of a firearm with an altered serial number, and conspiracy to possess with intent to sell or deliver marijuana. Defendant moved to suppress the evidence obtained as a result of the original seizure on the basis that Officer Brown lacked reasonable suspicion to conduct an investigatory stop of defendant. The trial court denied this motion in an order dated 5 December 2012. On 7 January 2013, defendant pleaded guilty to the offenses for which he was indicted while reserving his right to appeal the denial of his motion to suppress. In a divided opinion, the Court of Appeals reversed the trial court, holding that the facts and circumstances did not establish reasonable suspicion for Officer Brown to conduct an investigatory stop of defendant. *State v. Jackson*, ___ N.C. App. ___, ___, 758 S.E.2d 39, 46 (2014). The State appealed to this Court as a matter of right.

ANALYSIS

The sole issue presented in this appeal is whether the unchallenged facts found by the trial court sufficiently establish reasonable suspicion for the initial investigatory stop of defendant. Because we conclude that they do, we reverse the decision of the Court of Appeals.

As a general matter, "[b]oth the United States and North Carolina Constitutions protect against unreasonable searches and seizures." *State v. Otto*, 366 N.C. 134, 136, 726 S.E.2d 824, 827 (2012) (citing U.S. Const. amend. IV and N.C. Const. art. I, § 20). However, the United States Supreme Court has long held that the Fourth Amendment permits a police officer to conduct a brief investigatory stop of an individual based on reasonable suspicion that the individual is engaged in criminal activity. *See, e.g.*, *Terry v. Ohio*, 392 U.S. 1, 30-31, 88 S. Ct. 1868, 1884-85 (1968). As that Court has recently described, reasonable suspicion

requires specific, articulable facts indicating present, ongoing criminal activity and will not allow a stop based on a mere inchoate suspicion or "hunch":

> The Fourth Amendment permits brief investigative stops . . . when a law enforcement officer has a particularized and objective basis for suspecting the particular person stopped of criminal activity. The reasonable suspicion necessary to justify such a stop is dependent upon both the content of information possessed by [the officer] and its degree of reliability. The standard takes into account the totality of the circumstances—the whole picture. Although a mere "hunch" does not create reasonable suspicion, the level of suspicion the standard requires is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause.

Navarette v. California, ___ U.S. ___, ___, 134 S. Ct. 1683, 1687 (2014) (citations and internal quotation marks omitted). This same standard—reasonable suspicion—applies under the North Carolina Constitution. *See*, *e.g.*, *Otto*, 366 N.C. at 136-37, 726 S.E.2d at 827 (noting that traffic stops, as a type of brief investigatory seizure, are analyzed under the North Carolina Constitution using the reasonable suspicion standard). Therefore, when a criminal defendant files a motion to suppress challenging an initial investigatory stop, the trial court can deny that motion only if it concludes, after considering the totality of the circumstances known to the officer, that the officer possessed reasonable suspicion to justify the challenged stop.

When a motion to suppress is denied, this Court employs a two-part standard of review on appeal: " 'The standard of review in evaluating the denial of a motion to suppress is whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law.' " *Id.* at 136, 726 S.E.2d at 827 (quoting *State v. Biber*, 365 N.C. 162, 167-68, 712 S.E.2d 874, 878 (2011)). At the Court of Appeals, defendant challenged only finding of fact number five on the basis that it was not supported by competent evidence. The Court of Appeals agreed that finding number five was unsupported, and the State does not challenge that determination here. Therefore, we review de novo whether the unchallenged findings of fact are sufficient to establish that Officer Brown had reasonable suspicion to conduct a brief investigatory stop of defendant.

After holding a hearing regarding defendant's motion to suppress, the trial court entered a written order, dated 5 December 2012, which included the following relevant findings of fact:

> 1. Timothy D. Brown is and has been an officer for the Greensboro Police Department since August 15, 2009.
>
> 2. Officer Brown based on training and experience is familiar with marijuana and other narcotic drugs.
>
> . . . .
>
> 4. Prior to April 9, 2012, Officer Brown had on two occasions contact with the defendant, Tiyoun Jimek Jackson.
>
> . . . .
>
> 11. On April 9, 2012, Officer Brown was assigned and was patrolling zone 450 in a marked patrol car.
>
> 12. Officer Brown at approximately 9:00 pm was patrolling in the vicinity of Kim's Mart located at 2200 Phillips Avenue.
>
> 13. Based on Officer Brown's experience as a Greensboro Police Officer he knows that the immediate area outside of Kim's Mart has been the location of hundreds of narcotic investigations some resulting in arrests.
>
> 14. Officer Brown has personally made drug arrests in the immediate area of Kim's Mart.
>
> 15. Officer Brown is personally aware that hand-to-hand drug transactions have taken place on the sidewalk and street directly adjacent to Kim's Mart as well as inside Kim's Mart.
>
> 16. At approximately 9:00 pm on April 9, 2012 Officer Brown saw the defendant . . . and Curtis M. Benton standing near the newspaper dispenser outside of Kim's Mart.
>
> . . . .
>
> 19. The defendant . . . and Curtis M. Benton upon spotting Officer Brown in his marked patrol car stopped talking and dispersed.
>
> 20. The defendant . . . went to the East and walked into Kim's Mart and Curtis M. Benton walked away, in the opposite direction, to the West.

> 21. Officer Brown testified that his training and experience indicate that upon the approach of a law enforcement officer, two individuals engaged in a drug transaction will separate and walk away in opposite directions.
>
> 22. Officer Brown continued past Kim's Mart and down Phillips Avenue.
>
> 23. After losing sight of the defendant . . . and Curtis M. Benton, Officer Brown made a u-turn and headed back up Phillips Avenue toward Kim's Mart.
>
> 24. As Officer Brown again approached Kim's Mart, the defendant . . . and Curtis M. Benton were again standing in front of Kim's Mart approximately 20 feet from where Officer Brown saw them originally.
>
> 25. Officer Brown pulled into the parking lot at Kim's Mart.
>
> 26. As Officer Brown was pulling into the parking lot at Kim's Mart, the defendant . . . and Curtis M. Benton again separated and began walking away in opposite directions.

We conclude that these facts are sufficient, considering the totality of the circumstances, to create reasonable suspicion to justify the initial investigatory stop of defendant.

In making this determination, we are mindful of the dangers identified by defendant in his brief and at oral argument of making the simple act of walking in one's own neighborhood a possible indication of criminal activity. Here, defendant was walking in, and "the stop occurred in[,] a 'high crime area' [which is] among the relevant contextual considerations in a *Terry* analysis." *Illinois v. Wardlow*, 528 U.S. 119, 124, 120 S. Ct. 673, 676 (2000) (citation omitted). However, we do not hold that those circumstances, standing alone, suffice to establish the existence of reasonable suspicion. Here, in contrast, the trial court based its conclusion on more than defendant's presence in a high crime and high drug area. The findings of fact show defendant stood at 9:00 p.m. in a specific location known for hand-to-hand drug transactions that had been the site of many narcotics investigations; defendant and Benton split up and walked in opposite directions upon seeing a marked police vehicle approach; they came back very near to the same location once the patrol car passed; and they walked apart a second time upon seeing Officer Brown's return. We conclude that these facts go beyond an inchoate suspicion or hunch and provide a "particularized and objective basis for suspecting [defendant] of [involvement in] criminal activity."

Navarette, ___ U.S. at ___, 134 S. Ct. at 1687 (citations and quotation marks omitted). Accordingly, we reverse the Court of Appeals.

CONCLUSION

In sum, we conclude that the unchallenged findings of fact made by the trial court sufficiently establish that Officer Brown of the Greensboro Police Department had reasonable suspicion to conduct a brief investigatory stop of defendant. Accordingly, we reverse the decision of the Court of Appeals.

REVERSED.

STATE OF NORTH CAROLINA
v.
CURTIS MARIO BENTON

No. 207PA14

Filed 11 June 2015

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous, unpublished decision of the Court of Appeals, ___ N.C. App. ___, 762 S.E.2d 1 (2014), reversing an order entered on 25 April 2013 by Judge Ronald E. Spivey, and vacating a judgment dated 6 May 2013 and entered on 15 May 2013 by Judge David L. Hall, in Superior Court, Guilford County. Heard in the Supreme Court on 19 March 2015.

Roy Cooper, *Attorney General*, *by Derrick C. Mertz*, *Assistant Attorney General*, *for the State-appellant.*

Mark L. Hayes for defendant-appellee.

PER CURIAM.

In *State v. Jackson*, the Court of Appeals concluded in a divided opinion that the stop of the defendant in that case, Tiyoun Jimek Jackson, was not supported by reasonable suspicion. ___ N.C. App. ___, ___, 758 S.E.2d 39, 46 (2014). Based on its opinion in *Jackson*, the Court of Appeals concluded that the stop of the defendant in this companion case, Curtis Mario Benton, was also not supported by reasonable suspicion. *State v. Benton*, ___ N.C. App. ___, 762 S.E.2d 1, 2014 WL 2507700, at *1 (2014) (unpublished). On appeal to this Court, we concluded that

the stop of defendant Jackson was supported by reasonable suspicion, and we therefore reversed the decision of Court of Appeals. *State v. Jackson*, ___ N.C. ___, ___, ___ S.E.2d ___, ___ (June 11, 2015) (183A14). Accordingly, the decision of the Court of Appeals in *State v. Benton*, ___ N.C. App. ___, 762 S.E.2d 1 (2014) is vacated and remanded to that court for reconsideration in light of our opinion in *State v. Jackson*, ___ N.C. ___, ___ S.E.2d ___ (2015).

VACATED AND REMANDED.

TEMPLETON PROPERTIES LP, PETITIONER
v.
TOWN OF BOONE, RESPONDENT

No. 234PA14

Filed 11 June 2015

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, ___ N.C. App. ___, 759 S.E.2d 311 (2014), reversing an order entered on 7 August 2013 by Judge Shannon R. Joseph in Superior Court, Watauga County. Heard in the Supreme Court on 20 April 2015.

Brough Law Firm, by Michael B. Brough; and di Santi Watson Capua Wilson & Garrett, PLLC, by Anthony S. di Santi and Chelsea B. Garrett, for petitioner-appellant.

Parker Poe Adams & Bernstein LLP, by Benjamin R. Sullivan, for respondent-appellee.

PER CURIAM.

Justice JACKSON took no part in the consideration or decision of this case. The remaining members of the Court are equally divided, with three members voting to affirm and three members voting to reverse the decision of the Court of Appeals. Accordingly, the decision of the Court of Appeals is left undisturbed and stands without precedential value. *See, e.g., Amward Homes, Inc. v. Town of Cary*, 365 N.C. 305, 716 S.E.2d 849 (2011); *Goldston v. State*, 364 N.C. 416, 700 S.E.2d 223 (2010).

AFFIRMED.

STATE v. CAMPBELL

[368 N.C. 83 (2015)]

STATE OF NORTH CAROLINA
v.
THOMAS CRAIG CAMPBELL

No. 252PA14

Filed 11 June 2015

1. Larceny—indictment—legal entity capable of owning property—church or other place of religious worship

The Court of Appeals erred by concluding that a larceny indictment was fatally flawed because it failed to allege that Manna Baptist Church was a legal entity capable of owning property. Alleging ownership of property in an entity identified as a church or other place of religious worship, like identifying an entity as a "company" or "incorporated," signifies an entity capable of owning property, and the line of cases from the Court of Appeals that have held otherwise was overruled.

2. Burglary and Unlawful Breaking or Entering—felony breaking or entering—place of religious worship

The State presented sufficient evidence of defendant's criminal intent to sustain a conviction for felony breaking or entering a place of religious worship. The evidence showed that defendant unlawfully broke and entered Manna Baptist Church late at night, he did not have permission to be inside the church and could not remember what he did while there, and the pastor found defendant's wallet near the place where some of the missing equipment previously had been stored.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, ___ N.C. App. ___, 759 S.E.2d 380 (2014), vacating in part and reversing in part a judgment entered on 12 June 2013 by Judge Linwood O. Foust in Superior Court, Cleveland County, and remanding for entry of a revised judgment and resentencing thereon. Heard in the Supreme Court on 22 April 2015.

Roy Cooper, *Attorney General*, *by Teresa M. Postell*, *Assistant Attorney General*, *for the State-appellant.*

Staples S. Hughes, *Appellate Defender*, *by Barbara S. Blackman*, *Assistant Appellate Defender*, *for defendant-appellee.*

NEWBY, Justice.

In this case we must decide whether an indictment charging defendant with larceny is fatally flawed because it did not specifically state that a church, the alleged co-owner of the stolen property, is an entity capable of owning property, and whether the State presented sufficient evidence of defendant's intent to commit larceny to support his conviction for felonious breaking or entering a place of worship. Because the name of a church necessarily imports an entity capable of owning property, we hold that the indictment was sufficient on its face. Furthermore, we conclude that the State presented sufficient evidence of defendant's criminal intent to commit larceny. Therefore, we reverse the decision of the Court of Appeals and remand this case to that court for consideration of any remaining issues.

On 8 October 2013, the Cleveland County Grand Jury indicted defendant for felony breaking or entering a place of worship and felony larceny after breaking or entering. The larceny indictment specifically alleged that, on 15 August 2012, defendant stole "a music receiver, microphones and sounds system wires, the personal property of Andy Stevens and Manna Baptist Church, . . . in violation of N.C.G.S. [§] 14-54.1(a)." Defendant pled not guilty.

At trial, the State's evidence showed that at the conclusion of Sunday services on 19 August 2012, Pastor Andy Stevens of Manna Baptist Church discovered that some audio equipment was missing. Pastor Stevens lives on the Manna Baptist Church property. He testified that the church doors may have been inadvertently left unlocked on 15 August, following Wednesday evening services. When the church secretary arrived the next morning, she locked the doors, and they remained locked until Sunday morning. Although there was no sign of forced entry, Pastor Stevens found defendant's wallet in the baptistry changing area at the back of the church close to where some of the missing equipment previously had been located.

A detective testified that she spoke with defendant at the Cleveland County Detention Center, where he was being held on an unrelated charge. When defendant learned the detective wished to speak with him, he said, "[T]his can't possibly be good. What have I done now that I don't remember?" Defendant then admitted to being at Manna Baptist Church the night the doors were left unlocked. He said he was on "a spiritual journey" and "had done some things," but "did not remember what he had done" in the church.

At the close of the State's evidence, the trial court denied defendant's motion to dismiss the charges based on insufficient evidence. Defendant

then testified on his own behalf. He stated that on the night in question, he was asked to leave the house in which he was living, so he packed a duffle bag with his clothes and started walking toward a friend's house. Along the way, he dumped the bag in a ditch because it was too heavy to carry. Defendant arrived at his friend's house around midnight. When his friend's girlfriend asked him to leave, he kept walking until he reached Manna Baptist Church. Defendant noticed that the door to the church was cracked open. He was thirsty from walking all night, so he entered the church with the intent to find water and sanctuary. Defendant stated that once inside, he prayed, slept, "tried to do a lot of soul searching," and drank a bottle of water, although he admitted he was "not really sure exactly what [he] did the whole time [he] was" in the church. He also testified that he "did not take anything away from the church" when he left at daybreak.

After leaving the church, defendant felt chest pains, so he called 9-1-1. Defendant testified that he was taking a host of medications at the time, including a psychotropic drug, for his heart condition, stress disorder, bipolar condition, and diabetes. An Emergency Medical Technician ("E.M.T.") responded to the call around 6:30 a.m. on Thursday. The E.M.T. testified that defendant said he had been "wandering all night," that defendant looked "disheveled" and "worn out," and that defendant's "shoes were actually worn through the soles." The E.M.T. did not see defendant carrying anything.

At the close of evidence, defendant renewed his motion to dismiss for insufficient evidence, which the trial court again denied. The jury found defendant guilty of felony larceny and felony breaking or entering a place of religious worship, and defendant appealed.

The Court of Appeals vacated defendant's larceny conviction and reversed his conviction for breaking or entering. *State v. Campbell*, ___ N.C. App. ___, ___, 759 S.E.2d 380, 382 (2014). The Court of Appeals opined that when a larceny "indictment alleges multiple owners, one of whom is not a natural person, failure to allege that such an owner has the ability to own property is fatal to the indictment." *Id.* at ___, 759 S.E.2d at 384. Therefore, the Court of Appeals concluded that the larceny indictment was "fatally flawed" because it failed to "allege that Manna Baptist Church is a legal entity capable of owning property." *Id.* at ___, 759 S.E.2d at 384. The Court of Appeals further concluded that the State presented insufficient evidence of defendant's intent to commit larceny, an essential element of felony breaking or entering a place of worship. *Id.* at ___, 759 S.E.2d at 384. The Court of Appeals remanded the case to the trial court for entry of judgment on misdemeanor breaking or

entering, a lesser-included offense that does not require criminal intent. *Id.* at ___, 759 S.E.2d at 387. We allowed the State's petition for discretionary review. *State v. Campbell*, 367 N.C. 792, 766 S.E.2d 635 (2014).

[1] It is well settled "that a valid bill of indictment is essential to the jurisdiction of the trial court to try an accused for a felony." *State v. Sturdivant*, 304 N.C. 293, 308, 283 S.E.2d 719, 729 (1981) (citations omitted). The purpose of the indictment is to give a defendant reasonable notice of the charge against him so that he may prepare for trial. *Id.* at 311, 283 S.E.2d at 731 (citation omitted). A defendant can challenge the facial validity of an indictment at any time, and a conviction based on an invalid indictment must be vacated. *See, e.g.*, *McClure v. State*, 267 N.C. 212, 215, 148 S.E.2d 15, 17-18 (1966) (citation omitted).

To be valid a larceny indictment must " 'allege the ownership of the [stolen] property either in a natural person or a legal entity capable of owning (or holding) property.' " *State v. Jessup*, 279 N.C. 108, 112, 181 S.E.2d 594, 597 (1971) (citations omitted). The indictment here specifically alleges that defendant stole audio equipment belonging to "Andy Stevens and Manna Baptist Church." Because Andy Stevens is a natural person, naming him is sufficient to allege ownership of the property in him. *State v. Thornton*, 251 N.C. 658, 662, 111 S.E.2d 901, 903 (1960) (" 'If the property alleged to have been stolen is that of an individual, the name of the individual, if known, should be stated . . . .' "). Defendant nevertheless contends that the indictment is fatally defective because it fails to allege that Manna Baptist Church is a corporation or other legal entity capable of owning property. We disagree.

When alleging ownership in an entity, an indictment must specify that the owner, "if not a natural person, is a corporation or otherwise a legal entity capable of owning property," unless the entity's name itself "imports an association or a corporation capable of owning property." *Id.* at 661, 111 S.E.2d at 903. In *Thornton* we held that an indictment alleging the defendant embezzled money belonging to "The Chuck Wagon" was "fatally defective" because it failed to allege "that 'The Chuck Wagon' is a corporation, and the words 'The Chuck Wagon' do not import a corporation." *Id.* at 662, 111 S.E.2d at 904. We further explained, however, that the words "corporation," "incorporated," "limited," or "company," or their abbreviated form, sufficiently identify a corporation in an indictment. *Id.* Moreover, we cited favorably a Georgia appellate court decision holding that including the word "church" in the entity's name sufficiently "import[s] a religious association" capable of owning property. 251 N.C. at 661, 111 S.E.2d at 903 (citing *Gibson v. State*, 13 Ga. App. 67, 78 S.E. 829 (1913) (mem.)). This view is consistent with

our statutes recognizing that churches are entities capable of owning property in North Carolina. *See* N.C.G.S §§ 61-2 to -5 (2013). Therefore, we hold that alleging ownership of property in an entity identified as a church or other place of religious worship, like identifying an entity as a "company" or "incorporated," signifies an entity capable of owning property, and the line of cases from the Court of Appeals that has held otherwise is overruled. *See, e.g.*, *State v. Patterson*, 194 N.C. App. 608, 614, 671 S.E.2d 357, 361 (holding that indictment naming "First Baptist Church of Robbinsville" was fatally defective), *disc. rev. denied*, 363 N.C. 587, 683 S.E.2d 383 (2009); *State v. Cathey*, 162 N.C. App. 350, 353-54, 590 S.E.2d 408, 410-11 (2004) (holding that indictment naming "Faith Temple Church of God" was fatally defective). Accordingly, the larceny indictment here is valid on its face even though it does not specify that Manna Baptist Church is an entity capable of owning property, and the Court of Appeals erred in vacating defendant's conviction for larceny on that basis.

[2] The State next contends that the Court of Appeals incorrectly reversed and remanded defendant's conviction for felony breaking or entering because of insufficient evidence of defendant's intent to commit larceny at the time of the breaking or entering. To survive a motion to dismiss for insufficient evidence, the State must present "substantial evidence of all the material elements of the offense charged and that the defendant was the perpetrator of the offense." *State v. Myrick*, 306 N.C. 110, 113-14, 291 S.E.2d 577, 579 (1982) (citations omitted). The trial court must consider the evidence "in the light most favorable to the State; the State is entitled to every reasonable intendment and every reasonable inference to be drawn therefrom; contradictions and discrepancies are for the jury to resolve and do not warrant dismissal." *State v. Powell*, 299 N.C. 95, 99, 261 S.E.2d 114, 117 (1980) (citations omitted).

Defendant was charged under N.C.G.S. § 14-54.1(a) with wrongfully breaking or entering Manna Baptist Church *with intent to commit a larceny therein*. To meet its burden, the State must offer substantial evidence that defendant broke or entered the building with the requisite criminal intent. In *State v. Bell* we explained:

> Intent is a mental attitude seldom provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred. "The intent with which an accused broke and entered may be found by the jury from evidence as to what he did within the [building]. . . . However, the fact that a felony was actually committed

> after the [building] was entered is not necessarily proof of the intent requisite for the crime of [larceny]. It is only evidence from which such intent at the time of the breaking and entering may be found. Conversely, actual commission of the felony . . . is not required in order to sustain a conviction of [larceny]."

285 N.C. 746, 750, 208 S.E.2d 506, 508 (1974) (second alteration in original) (citations omitted).

Here evidence showed that defendant unlawfully broke and entered Manna Baptist Church late at night. *See State v. Sweezy*, 291 N.C. 366, 383, 230 S.E.2d 524, 535 (1976) ("It is well established that the mere pushing or pulling open of an unlocked door constitutes a breaking."). Defendant did not have permission to be inside the church and could not remember what he did while there, and Pastor Stevens found defendant's wallet near the place where some of the missing equipment previously had been stored. Considered in the light most favorable to the State, this evidence was sufficient to take the case to the jury on the question of defendant's intent to commit larceny when he broke and entered Manna Baptist Church. Therefore, the trial court properly denied defendant's motion to dismiss the breaking or entering charge for insufficient evidence.

Thus, we hold that the larceny indictment alleging ownership of stolen property of Manna Baptist Church sufficiently alleged ownership in a legal entity capable of owning property. We further conclude that the State presented sufficient evidence of defendant's criminal intent to sustain a conviction for felony breaking or entering a place of religious worship, and the trial court properly denied defendant's motions to dismiss. Accordingly, we reverse the decision of the Court of Appeals and remand this case to that court for consideration of any remaining issues on appeal.

REVERSED AND REMANDED.

IN RE J.C.

[368 N.C. 89 (2015)]

IN THE MATTER OF J.C., J.C.

No. 280A14

Filed 11 June 2015

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 760 S.E.2d 778 (2014), affirming an amended adjudication order finding neglect entered on 22 October 2013 and a disposition order entered on 15 October 2013, both by Judge Resson Faircloth in District Court, Johnston County, but remanding the adjudication order for correction of a clerical error. Heard in the Supreme Court on 16 March 2015.

Holland & O'Connor, P.L.L.C., by Jennifer S. O'Connor, for Johnston County Department of Social Services, petitioner-appellee.

Tawanda N. Foster, Appellate Counsel, Administrative Office of the Courts, Guardian ad Litem Services Division, for appellee Guardian ad Litem.

Richard Croutharmel for respondent-appellant-mother.

PER CURIAM.

The district court made no findings whether respondent mother was able to pay for supervised visitation once ordered. Without such findings, our appellate courts are unable to determine if the trial court abused its discretion by requiring as a condition of visitation that visits with the children be at respondent mother's expense. *See Quick v. Quick*, 305 N.C. 446, 452, 290 S.E.2d 653, 658 (1982) (" 'The purpose of the requirement that the court make findings of those specific facts which support its ultimate disposition of the case is to allow a reviewing court to determine from the record whether the judgment—and the legal conclusions which underlie it—represent a correct application of the law.' " (quoting *Coble v. Coble*, 300 N.C. 708, 712, 268 S.E.2d 185, 189 (1980))). We hold that insufficient findings of fact existed here to support meaningful appellate review. Accordingly, we reverse the decision of the Court of Appeals affirming the disposition order and remand this case to that court for further remand to the trial court with instructions to vacate the portion of the disposition order requiring that respondent mother's visits be "at her expense," and for entry of a new disposition order once the trial court makes the necessary findings of fact. The remaining issues addressed by the Court of Appeals are not properly

before this Court, and the decision of the Court of Appeals as to these matters remains undisturbed.

REVERSED AND REMANDED.

STATE OF NORTH CAROLINA
v.
EDDIE DANIEL BERRY

No. 315A14

Filed 11 June 2015

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 761 S.E.2d 700 (2014), finding no error in part and dismissing defendant's appeal in part from judgments entered on 28 February 2013 by Judge James E. Hardin, Jr. in Superior Court, Alamance County. Heard in the Supreme Court on 20 April 2015.

Roy Cooper, *Attorney General*, *by Sarah Y. Meacham and Mary Carla Babb*, *Assistant Attorneys General*, *for the State.*

Staples S. Hughes, *Appellate Defender*, *by Nicholas C. Woomer-Deters*, *Assistant Appellate Defender*, *for defendant-appellant.*

PER CURIAM.

For the reasons stated in the dissenting opinion, the opinion of the Court of Appeals is reversed.

REVERSED AND REMANDED.

SANDHILL AMUSEMENTS, INC. AND GIFT SURPLUS, LLC
v.
SHERIFF OF ONSLOW COUNTY, NORTH CAROLINA, HANS J. MILLER, IN HIS OFFICIAL CAPACITY; AND DISTRICT ATTORNEY FOR THE FOURTH PROSECUTORIAL DISTRICT OF THE STATE OF NORTH CAROLINA, ERNIE LEE, IN HIS OFFICIAL CAPACITY

No. 363A14

Filed 11 June 2015

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 762 S.E.2d 666 (2014), affirming in part, vacating in part, and dismissing in part an appeal from orders entered on 4 November 2013 by Judge Jack Jenkins in Superior Court, Onslow County. Heard in the Supreme Court on 21 April 2015.

Daughtry, Woodard, Lawrence & Starling, by Kelly K. Daughtry and Luther D. Starling, for plaintiff-appellee Sandhill Amusements, Inc.

Hyler & Lopez, P.A., by Stephen P. Agan and George B. Hyler, Jr., for plaintiff-appellee Gift Surplus, LLC.

Turrentine Law Firm, PLLC, by S.C. Kitchen, and Lesley F. Moxley, Onslow County Attorney, for defendant-appellant Sheriff Hans J. Miller.

Edmond W. Caldwell, Jr., General Counsel for North Carolina Sheriffs' Association, amicus curiae.

PER CURIAM.

For the reasons stated in the dissenting opinion, the decision of the Court of Appeals is reversed. This case is remanded to the Court of Appeals for further remand to the Superior Court, Onslow County, for further proceedings not inconsistent with this opinion.

REVERSED AND REMANDED.

Justice ERVIN did not participate in the consideration or decision of this case.

CAPE FEAR RIVER WATCH, SIERRA CLUB, WATERKEEPER ALLIANCE, AND MOUNTAINTRUE (F/K/A WESTERN NORTH CAROLINA ALLIANCE), PETITIONERS
v.
NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION, RESPONDENT
and
DUKE ENERGY CAROLINAS, LLC AND DUKE ENERGY PROGRESS, INC., RESPONDENT-INTERVENORS

No. 373A14

Filed 11 June 2015

Appeal and Error—mootness—coal ash lagoons—superseding legislation

The Supreme Court considered whether the trial court erred by reversing a portion of a declaratory ruling issued by the North Carolina Environmental Management Commission (Commission) on 18 December 2012 relating to the application of the Commission's groundwater protection rules to coal ash lagoons. The General Assembly's enactment of Chapter 122 of the 2014 North Carolina Session Laws superseded the rule at issue with respect to coal ash lagoons located at facilities with active permits, and petitioners' appeal from the Commission's declaratory ruling was moot.

Appeal pursuant to N.C.G.S. §§ 7A-27(b)(1) and 150B-52 from an order on petition for judicial review entered on 6 March 2014 by Judge Paul C. Ridgeway in Superior Court, Wake County. On 10 October 2014, pursuant to N.C.G.S. § 7A-31(a) and (b)(2) and Rule 15(e)(2) of the North Carolina Rules of Appellate Procedure, the Supreme Court on its own initiative certified the case for review prior to determination in the Court of Appeals. Heard in the Supreme Court on 16 March 2015.

Southern Environmental Law Center, by Austin D. Gerken Jr., Amelia Y. Burnette, J. Patrick Hunter, and Frank Holleman, for petitioner-appellees.

Roy Cooper, Attorney General, by Mary L. Lucasse and Jennie Wilhelm Hauser, Special Deputy Attorneys General, for respondent-appellant.

Womble Carlyle Sandridge & Rice, LLP, by James P. Cooney III; and Hunton & Williams LLP, by Charles D. Case, Matthew F. Hanchey, Frank E. Emory, Jr., and Brent A. Rosser, for respondent-intervenor-appellants.

ERVIN, Justice.

The substantive issue before us in this case is whether the trial court erred by reversing a portion of a declaratory ruling issued by the North Carolina Environmental Management Commission (Commission) on 18 December 2012 relating to the application of the Commission's groundwater protection rules codified at Title 15A, Subchapter 2L, "Groundwater Classification and Standards," of the North Carolina Administrative Code, to coal ash lagoons. See 15A NCAC 2L .0101-.0417 (June 2014) [hereinafter Groundwater Rules]. In view of our conclusion that the General Assembly's enactment of Chapter 122 of the 2014 North Carolina Session Laws[1] supersedes the rule at issue in this appeal with respect to coal ash lagoons located at facilities with active permits, *see* Act of Aug. 20, 2014, ch. 122, 2014 5 N.C. Adv. Legis. Serv. 77 (LexisNexis) [hereinafter Chapter 122], we vacate the trial court's order and remand this case to the trial court with instructions to dismiss petitioners' appeal from the Commission's declaratory ruling on mootness grounds.

The present case stems from a dispute over the manner in which certain regulatory requirements should be applied to coal ash lagoons that received operating permits before 30 December 1983.[2] At the time at which the present proceeding was commenced, unlined coal ash lagoons existed at fourteen coal-fired electric generating facilities located in North Carolina. These coal ash lagoons contained the residue from the combustion of coal used to generate electricity. These residual materials consisted of a mixture of water, coal combustion by-products, and other waste.[3] All fourteen of the power generation facilities at issue in this case operate subject to National Pollutant Discharge Elimination System ("NPDES") permits that were originally issued by the North Carolina Department of Environment and Natural Resources ("DENR") and are subject to Groundwater Rules that have been adopted by the

1. The parties have referred to Chapter 122, in its entirety, as the "Coal Ash Management Act." However, the Coal Ash Management Act of 2014 (codified at N.C.G.S. §§ 130A-309.200 to -309.231) is a component of Chapter 122, which also amends a number of pre-existing statutory provisions.

2. According to the regulations at issue in this proceeding, facilities with coal ash lagoons that were permitted prior to 30 December 1983 are "deemed not permitted." 15A NCAC 2L .0106(e)(4).

3. The waste by-products found in the coal ash lagoons at issue in this case include arsenic, thallium, boron, sulfate, nickel, iron, chromium, manganese, and selenium, all of which are subject to groundwater concentration standards.

Commission. According to groundwater samples taken from monitoring wells located on the properties on which the coal ash lagoons are located, levels of contamination that exceed the relevant groundwater standards have been reported near some lagoons associated with the coal-fired generating facilities at issue in this proceeding.

Section .0106 of Title 15A, Subchapter 2L of the North Carolina Administrative Code describes the corrective actions required when "groundwater quality has been degraded." 15A NCAC 2L .0106 [hereinafter Rule .0106]. According to Rule .0106(c), which applies to sites that are either unpermitted or "deemed not permitted" pursuant to Rule .0106(e)(4) at which groundwater contamination exceeds authorized levels:

> Any person conducting or controlling an activity which has not been permitted by the Division and which results in an increase in the concentration of a substance in excess of the standard, other than agricultural operations, shall:
>
> (1) immediately notify the Division of the activity that has resulted in the increase and the contaminant concentration levels;
>
> (2) take immediate action to eliminate the source or sources of contamination;
>
> (3) submit a report to the Director assessing the cause, significance and extent of the violation; and
>
> (4) implement an approved corrective action plan for restoration of groundwater quality in accordance with a schedule established by the Director or his designee. In establishing a schedule the Director, or his designee shall consider any reasonable schedule proposed by the person submitting the plan.

Id. .0106(c). On 10 October 2012, Cape Fear River Watch, Sierra Club, Waterkeeper Alliance, and Western North Carolina Alliance filed a request that the Commission issue a declaratory ruling clarifying the application of the Groundwater Rules to coal ash lagoons. More specifically, petitioners requested the Commission to make the following rulings:

> a) Operators of coal ash lagoons with NPDES permits first issued on or before December 30, 1983, must take corrective action pursuant to 15A N.C. Admin. Code 2L .0106(c) when their activity results in an increase in

the concentration of a substance in excess of groundwater quality standards, whether or not groundwater quality standards have been exceeded at or beyond a compliance boundary around the lagoon;

b) Operators of coal ash lagoons with NPDES permits first issued on or before December 30, 1983, must take immediate action to eliminate sources of contamination that cause a concentration of a substance in excess of groundwater quality standards, in advance of their separate obligation to propose and implement a corrective action plan for the restoration of groundwater quality contaminated by those sources; and

c) Operators of closed and inactive coal ash lagoons must implement corrective action as unpermitted activities pursuant to 15A N.C. Admin. Code 2L .0106(c) when they cause an increase in the concentration of a substance in excess of groundwater quality standards.

After the filing of this request for a declaratory ruling and a decision by petitioners and DENR to enter into certain stipulations relating to relevant facts, the Commission granted an intervention petition filed by Duke Energy Carolinas, LLC and Carolina Power & Light Company, an indirect subsidiary of Duke Energy Corporation, d/b/a Progress Energy Carolinas ("Duke"). After reviewing the record and hearing oral argument from counsel for the parties at a 3 December 2012 meeting, the Commission issued a declaratory ruling on 18 December 2012, concluding, in pertinent part, that:

> 16. Activities that do not meet the requirements of 2L .0106(e), including those permitted prior to December 30, 1983, are deemed unpermitted and are subject to the requirements of 2L .0106(c) applicable to persons conducting or controlling an activity (other than agricultural operations) that has not been permitted and which results in an increase in the concentration of a substance in excess of the standard.
>
> 17. The corrective action requirements in 2L .0106(c)(1) through (4) are not prioritized, and the immediate action to eliminate the source or sources of contamination requires responsible parties and the Division to follow the detailed procedures set forth in the entirety of the 2L Groundwater Rules.

> 18. The specific corrective actions enumerated in 15A NCAC 2L .0106(f)(1) through (4) that are required to be undertaken, including a site assessment and a corrective action plan for the abatement, containment or control of migration of any contaminants, require a reasonable amount of time to accomplish. The "immediate action" contemplated by 15A NCAC 2L .0106(c)(2) is action appropriate to the circumstances evaluated in the context of the 2L Groundwater Rules.

On 8 January 2013, petitioners filed a petition seeking judicial review of the Commission's declaratory ruling in Superior Court, Wake County, in which they claimed that the Commission had misconstrued the applicable regulations and erroneously failed to construe the applicable regulations in the manner contended for by petitioners in their original request for declaratory relief. After the submission of legal memoranda from the parties, the trial court heard oral argument on 26 August 2013 concerning the issues raised by petitioners' request for a declaratory ruling. On the same day, Duke submitted a supplemental brief informing the trial court about the enactment of Chapter 413 of the North Carolina Session Laws three days earlier. *See* Act of July 26, 2013, ch. 413, Sec. 46, 2013 N.C. Sess. Laws 1752, 1783-84 [hereinafter Chapter 413].[4] According to Duke, the enactment of Chapter 413 rendered moot the first of the three rulings that petitioners sought to have the trial court make. In response, petitioners submitted a supplemental brief in which they acknowledged that the first ruling that they had requested the Commission to make had been rendered moot by the enactment of Chapter 413.

On 6 March 2014, the trial court entered an order determining that portions of the Commission's decision were "plainly erroneous and inconsistent with the regulation." More specifically, the trial court found that the first request contained in petitioner's original request for a declaratory ruling had, as the parties agreed, been rendered moot by the enactment of Chapter 413;[5] reversed the Commission's decision with respect to petitioners' second request for a declaratory ruling and concluded that, in the event of a violation of the applicable groundwater rules by an unpermitted entity, "immediate action" must be taken to

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4. This legislation was signed by the Governor on 23 August 2013 and took effect on that date.

5. As a result, the appropriateness of utilizing a compliance boundary in the course of determining whether a violation of the groundwater standards has occurred is no longer in dispute between the parties.

"eliminate sources" of the contamination that caused the violation; and dismissed petitioners' claim with respect to the third request for declaratory relief set out in their original petition relating to unpermitted coal ash disposal sites on the grounds that petitioners had, in fact, prevailed on that issue before the Commission given that the Commission's "[r]uling concurs with [petitioners'] interpretation." The Commission and Duke noted an appeal to the Court of Appeals from that portion of the trial court's order relating to the second ruling requested in petitioners' petition for a declaratory ruling. On 10 October 2014, this Court on its own motion certified this case for immediate review prior to determination of this case by the Court of Appeals.[6]

On 20 August 2014, the General Assembly ratified Chapter 122, which became effective on 20 September 2014 after the Governor failed to either sign or veto it. Act of Aug. 20, 2014, ch. 122, 2014 5 N.C. Adv. Legis. Serv. 77 (LexisNexis).

> "[W]henever during the course of litigation it develops that . . . the questions originally in controversy between the parties are no longer at issue, the case should be dismissed, for courts will not entertain an action merely to determine

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6. Duke and petitioners both filed motions seeking to have this Court take judicial notice of various items of information. In its motion, Duke requested us to judicially notice certain statements made by members of the General Assembly during a 3 July 2014 session of the House of Representatives and certain news reports relating to the 2014 coal ash legislation. In their motions, petitioners asked us to judicially notice certain public records demonstrating the manner in which 15A NCAC 2L .0106(c) had been interpreted in the past and materials relating to a DENR decision imposing approximately $25 million in civil penalties and a "Proposed Groundwater Assessment Work Plan" relating to alleged groundwater violations at Duke's L.V. Sutton generating facility. In light of our determination that the issue before us at this time is moot, we conclude that the same is true of the first of petitioners' requests for judicial notice, which we also dismiss as moot. In view of the fact that "[t]estimony, even by members of the Legislature which adopted the statute, as to its purpose and the construction intended to be given by the Legislature to its terms, is not competent evidence upon which the court can make its determination as to the meaning of the statutory provision," *State ex rel. N.C. Milk Comm'n v. Nat'l Food Stores, Inc.*, 270 N.C. 323, 332-33, 154 S.E.2d 548, 555 (1967) (citations omitted), Duke's request for judicial notice is denied. Finally, petitioners' second motion for judicial notice, which, according to petitioners, tends to show that DENR does not consider the Groundwater Rules upon which their request for a declaratory ruling is predicated to have been superseded by the enactment of the Coal Ash Management Act, while arguably relevant to the mootness issue that forms the basis for our decision, involves documents relating to a specific enforcement action stemming from an alleged groundwater violation at a specific electric generating facility. In view of the complexity of the issues that would be raised by consideration of this filing, the fact that additional litigation may well result from the enforcement action that is reflected in the documents in question, and the fact that the parties have not had a chance to fully brief any issues that would arise from a consideration of these documents, we conclude that petitioners' second request for judicial notice should be denied as well.

> abstract propositions of law. If the issues before the court become moot at any time during the course of the proceedings, the usual response is to dismiss the action."

Messer v. Town of Chapel Hill, 346 N.C. 259, 260, 485 S.E.2d 269, 270 (1997) (per curiam) (ellipsis in original) (citations omitted). According to the Commission and Duke, the enactment of this legislation rendered the declaratory ruling that is before us in this case moot on the grounds that provisions of the legislation in question superseded Rule .0106(c) with respect to the manner in which groundwater violations occurring at facilities subject to active NPDES permits should be addressed. We agree.

As rewritten by the General Assembly effective 20 September 2014, N.C.G.S. § 143-215.1(k), which addresses the proper response to a situation in which groundwater standard violations occur beyond a facility's compliance boundary, provides that:

> (k) Where the operation of a disposal system permitted under this section results in exceedances of the groundwater quality standards at or beyond the compliance *boundary, the Commission shall require the permittee to undertake corrective action, without regard to the date that the system was first permitted, to restore the groundwater quality by assessing the cause, significance, and extent of the violation of standards and submit the results of the investigation and a plan and proposed schedule for corrective action to the Director or the Director's designee . . . . In establishing a schedule the Director or the Director's designee shall consider any reasonable schedule proposed by the permittee.*

N.C.G.S. § 143-215.1(k) (2014), *as amended by* ch. 122, Sec. 12(a), 2014 5 N.C. Adv. Legis. Serv. at 123 (added language in italics). Although petitioners agree that the rewritten version of N.C.G.S. § 143-215.1(k) eliminates the distinction between facilities that were permitted before 30 December 1983 and facilities that were permitted after that date by providing that all permitted facilities, "without regard to the date that the system was first permitted," are subject to the corrective action requirements of Rule .0106(d), petitioners contend that the enactment of the revised version of N.C.G.S. § 143-215.1(k) does not have the effect of mooting the trial court's ruling with respect to the second issue posed in their original petition for declaratory relief given that the new statutory language does not alter the regulatory requirements applicable to

disposal sites that do not hold active permits issued pursuant to N.C.G.S. § 143-215.1.[7] We do not find petitioners' contention persuasive.

Any consideration of the validity of petitioners' response to the mootness contention advanced by the Commission and Duke must begin with an understanding that the only issue before us at this time is the correctness of the trial court's ruling with respect to the second issue set out in petitioners' original request for a declaratory ruling. In that portion of their filing, petitioners requested the Commission to determine that "[o]perators of coal ash lagoons *with NPDES permits* first issued on or before December 30, 1983, must take immediate action to eliminate sources of contamination that cause a concentration of a substance in excess of groundwater quality standards." (Emphasis added.) As a review of its plain language clearly indicates, the second request for a declaratory ruling set out in petitioners' petition related solely to facilities holding an NPDES permit. By contrast, the third request for a declaratory ruling set out in petitioners' petition applied to "[o]perators of closed and inactive coal ash lagoons." Although petitioners correctly assert that the second request set out in their petition for a declaratory ruling is only moot as applied to facilities with *active* permits, their second request for a declaratory ruling was limited to facilities with such permits. As a result, the only issue that, in petitioners' view, remains viable following the enactment of the current version of N.C.G.S. § 143-215.1(k) is not properly before the Court.

Assuming, without deciding, that the second requested ruling set out in petitioners' request for a declaratory ruling could apply to facilities that lack active permits, we believe that the issue that is currently before us is moot for an entirely different reason. The trial court's unchallenged findings of fact establish that "[t]here is no evidence of record of any closed or inactive coal ash lagoons." "A trial court's unchallenged findings of fact are presumed to be supported by competent evidence and [are] binding on appeal." *Mussa v. Palmer-Mussa*, 366 N.C. 185, 191, 731 S.E.2d 404, 409 (2012) (alteration in original) (citation and internal quotation marks omitted). As this finding suggests, a careful examination of the uncontradicted evidence contained in the record that has been presented for our review in this case tends to show that all facilities at

7. In their brief, petitioners also argue that the provisions of Chapter 122 do not eliminate the applicability of the groundwater standards given that the former operates as a minimum set of requirements that DENR is free to supplement with more stringent regulations. However, petitioners did not press this argument at oral argument and we do not find it persuasive given the detailed instructions set out in the relevant provisions of Chapter 122 for addressing remediation-related issues.

which coal ash lagoons were located did, in fact, hold an active NPDES permit.[8] As a result, the evidence before us in this case reinforces our conclusion that this case has been rendered moot as a matter of both law and fact by virtue of the enactment of the revised version of N.C.G.S. § 143-215.1(k).

Finally, petitioners contend that we should review the correctness of the trial court's resolution of the issue posited by the second request for a declaratory ruling set out in their original petition given that this issue involves a question of extraordinary public interest. "In state courts the exclusion of moot questions from determination is not based on a lack of jurisdiction but rather represents a form of judicial restraint." *In re Peoples*, 296 N.C. 109, 147, 250 S.E.2d 890, 912 (1978) (citations omitted), *cert. denied*, 442 U.S. 929, 99 S. Ct. 2859, 61 L. Ed. 2d 297 (1979). "Even if moot . . . this Court may, if it chooses, consider a question that involves a matter of public interest, is of general importance and deserves prompt resolution." *N.C. State Bar v. Randolph*, 325 N.C. 699, 701, 386 S.E.2d 185, 186 (1989) (per curiam) (citations omitted). While the appropriate response to the environmental issues associated with the operation of coal ash lagoons is clearly a matter of significant public interest, this Court's role in the resolution of such questions is limited to determining the content of existing law and ensuring that existing law is appropriately applied to the relevant facts. At this point, the record does not contain any indication that any decision that we might make with respect to the correctness of the trial court's resolution of the second request for a declaratory ruling set out in petitioners' petition would have any practical impact. In addition, it is clear that the General Assembly has taken an active role in the proper resolution of the issues that petitioners sought to have addressed in the petition for a declaratory ruling. By adopting Chapter 122, the General Assembly sought to address the public's understandable concern about the effect of the operation of coal ash lagoons on the ground and surface waters in North Carolina. In light of these considerations, we believe that we should refrain from issuing what amounts to an advisory opinion concerning any impact of the applicable regulation on any non-permitted coal ash lagoons that may, contrary to the record evidence, actually exist. As a result, we hereby vacate the trial court's order and remand this case to the trial court

8. A list of permitted facilities, complete with the NPDES permit number applicable to each facility and the date upon which the original permit applicable to that facility had been issued, was submitted to the Commission and stipulated to by petitioners as being accurate.

with instructions to dismiss petitioners' appeal from the Commission's declaratory ruling on mootness grounds.[9]

VACATED AND REMANDED.

Justice EDMUNDS did not participate in the consideration or decision of this case.

IN THE MATTER OF T.L.H.

No. 457A14

Filed 11 June 2015

Termination of Parental Rights—competency inquiry—parental guardian ad litem

The trial court did not abuse its discretion in a termination of parental rights case by failing to inquire into the issue of whether respondent mother was entitled to the appointment of a parental guardian ad litem. Sufficient evidence showing that respondent was not incompetent existed to obviate the necessity for the trial court to conduct a competence inquiry before proceeding with the termination hearing.

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 765 S.E.2d 88 (2014), reversing an order entered on 4 February 2014 by Judge Tabatha Holliday in District Court, Guilford County, and remanding this case to the trial court for further proceedings. Heard in the Supreme Court on 21 April 2015.

Mercedes O. Chut for petitioner-appellant Guilford County Department of Health and Human Services.

Parker Poe Adams & Bernstein, LLP, by Sye T. Hickey, Appellate Counsel for appellant Guardian ad Litem, on behalf of the minor child.

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9. In view of our determination that this proceeding has been rendered moot by the enactment of N.C.G.S. § 143-215.1(k) (2014), we need not address the jurisdictional and substantive challenges that have been advanced in opposition to the trial court's order on judicial review.

J. Lee Gilliam, *Assistant Appellate Defender*, *for respondent-appellee mother.*

ERVIN, Justice.

The ultimate issue before us in this case is the extent to which a trial court must inquire into a parent's competence to determine whether it is necessary to appoint a guardian *ad litem* for that parent despite the absence of any request that such a hearing be held or that a parental guardian *ad litem* be appointed. After considering this issue in light of the record developed in this case, the Court of Appeals held that the trial court abused its discretion by failing to inquire into the issue of whether respondent was entitled to the appointment of a parental guardian *ad litem* given that the information available to the trial court raised a substantial question concerning her competence. We reverse the decision of the Court of Appeals.

Respondent delivered her son, T.L.H., in April of 2013. At the hospital in which T.L.H. was born, respondent voluntarily placed the child with the Guilford County Department of Health and Human Services ("DHHS") based upon her concerns about the safety of the home that she shared with her romantic partner, Adam McNeill. Respondent's concerns stemmed from the presence of illicit drugs in the residence that she shared with Mr. McNeill and the unsafe environment created by certain unsavory individuals who frequented the home. In addition, respondent acknowledged that, even though she had been diagnosed as suffering from certain mental health problems,[1] she was not taking her prescribed psychotropic medication at that time. Nonetheless, respondent clearly indicated that, instead of relinquishing her parental rights in T.L.H., she wanted to work toward reunification with her son.

On 12 April 2013, DHHS filed a petition alleging that T.L.H. was a neglected and dependent juvenile. In its petition, DHHS alleged, among other things, that respondent "ha[d] been to the hospital on several occasions in the last year due to mental health complications" and that she "has diagnoses of schizoaffective disorder, bipolar, cannabis abuse and personality disorder." At the request of DHHS, Judge Betty Brown appointed Amy Bullock to serve as respondent's guardian *ad litem* on

1. More specifically, respondent told a social worker that she had been diagnosed as bipolar at age fifteen, that she had been diagnosed as schizophrenic in her twenties, and that she had refrained from taking the medications that had been prescribed for her to treat these conditions because they made her feel sick.

a "provisional/interim basis" in an order entered on 18 April 2013 that lacked findings of fact or conclusions of law relating to the appointment issue and did not specify whether Ms. Bullock was to act in a substitutive or assistive capacity.

After a hearing held on 16 May 2013, Judge Brown entered an adjudication and disposition order on 5 June 2013 determining that T.L.H. was a dependent juvenile, dismissing the neglect allegation without prejudice, retaining T.L.H. in DHHS custody, and establishing a case plan under which respondent would visit with T.L.H. At the time of the 16 May hearing, respondent did not have housing independent of Mr. McNeill, with whom incidents of domestic violence had occurred. However, respondent was on a Housing Authority waiting list. Respondent's sole source of income consisted of $473.00 in monthly Social Security disability benefits that had been awarded based on her diagnosed mental conditions, including bipolar disorder, schizoaffective disorder, and narcolepsy. According to court summaries that had been prepared by DHHS and T.L.H.'s guardian *ad litem* and submitted for Judge Brown's consideration:

> [Respondent] has a history of substance abuse and has diagnoses of schizophrenic, chronic paranoid type, chronically noncompliant, marijuana dependence, personality disorder, rule out borderline intellectual functioning.
>
> . . . .
>
> . . . [Respondent] is not consistent in her mental health treatment and is not currently on medication. [Respondent] does not come to visitation timely and needs guidance for basic child care.

As a result, Judge Brown found in the 5 June 2013 order that:

> 11. [Respondent] has been to the hospital on several occasions in the last year due to mental health complications. According to the hospital records, [respondent] is diagnosed with Schizoaffective Disorder, Bi-polar Disorder, Cannabis Abuse and Personality Disorder.

A permanency planning hearing, at which respondent testified, was held on 11 July 2013 before Judge Angela C. Foster. On 9 August 2013, Judge Foster entered an order finding that respondent was not in compliance with her case plan "on any level" and had not been visiting with T.L.H. on a regular basis. As a result, Judge Foster relieved DHHS from any responsibility for making further efforts to reunify respondent

with T.L.H. and determined that the permanent plan for T.L.H. would be adoption.

On 9 September 2013, DHHS filed a petition seeking to have respondent's parental rights in T.L.H. terminated[2] on the grounds that T.L.H. was a neglected juvenile, that respondent was incapable of properly providing for T.L.H.'s care and did not have an appropriate alternate child care arrangement for T.L.H., and that respondent's parental rights in another child had previously been terminated and respondent lacked the ability or willingness to establish a safe home for T.L.H. N.C.G.S. § 7B-1111(a) (1), (6), (9) (2013). Among other things, DHHS alleged that respondent's parental rights were subject to termination for incapability pursuant to N.C.G.S. § 7B-1111(a)(6) on the basis of her "narcolepsy, mental illness (including Schizophrenia, Chronic Paranoid Type, Chronically Noncompliant, Schizo-Affective Disorder, Bipolar Disorder, and level of functioning), failure to comply with mental health treatment, and long history of using illegal substances (Cannabis Dependency)." Moreover, DHHS requested that the trial court "make an inquiry as to whether [respondent] needs to have a Guardian ad Litem appointed for purposes of this proceeding."

On 18 November 2013, Judge Thomas Jarrell, Jr., conducted a pretrial hearing regarding the termination petition. Ms. Bullock, who had served as respondent's guardian *ad litem* at the adjudication and disposition hearing and at the permanency planning proceeding, was present and stood "in for Attorney Edward Branscomb as Attorney for Mother" at the pretrial hearing. Without making any specific findings concerning respondent's mental condition or the reasons underlying Ms. Bullock's initial appointment as respondent's guardian *ad litem*, Judge Jarrell determined that "Attorney Amy C. Bullock was released by operation of law effective October 1, 2013 as the mother's guardian ad litem attorney of assistance."

The termination petition came on for hearing before the trial court on 6 January 2014. Because respondent was not present when the case was called for hearing, her trial counsel unsuccessfully sought to have the termination proceeding continued. On 4 February 2014, the trial court entered an order finding that respondent's parental rights in T.L.H. were subject to termination based upon all the grounds enumerated in

2. Respondent has two other children in addition to T.L.H., neither of whom is in her custody. An aunt has been appointed guardian for a daughter born in 2000. Respondent's parental rights in a daughter born in May 2004 were terminated on 18 September 2006.

the petition and that T.L.H.'s best interests would be served by terminating respondent's parental rights.[3] Among other things, the trial court found as a fact that respondent "ha[d] been diagnosed with Bipolar Disorder, Schizophrenia, Schizo-Affective Disorder, and Narcolepsy"; that she "ha[d] a long history of failing and refusing to take her mental health medications as prescribed and recommended"; and that she "ha[d] also been diagnosed with Cannabis Dependence, has a long history of the same, tested positive for Marijuana, and failed to submit to a substance abuse assessment as requested." Respondent noted an appeal to the Court of Appeals from the trial court's termination order.

In her sole challenge to the trial court's termination order before the Court of Appeals, respondent argued that the trial court had abused its discretion by failing to conduct an inquiry concerning whether she was entitled to the appointment of a guardian a*d litem*. *In re T.L.H.*, ___ N.C. App. ___, ___, 765 S.E.2d 88, 90 (2014). A divided panel of the Court of Appeals determined that respondent's contention had merit, reversed the trial court's termination order, and remanded this case to the trial court for the purpose of determining whether respondent was, in fact, entitled to the appointment of a guardian *ad litem*. *Id.* at ___, 765 S.E.2d at 92. In dissent, Judge Robert C. Hunter argued that Judge Jarrell had, in fact, conducted an inquiry into the necessity for appointment of a parental guardian *ad litem* at the pretrial hearing, that the record did not contain any indication that respondent's mental condition had deteriorated between the pretrial hearing and the termination hearing to such an extent that the trial court abused its discretion by failing to conduct an inquiry into the extent to which she was entitled to the appointment of a guardian ad litem, and that the trial court had not abused its discretion by failing to make an inquiry into respondent's competence. *Id.* at ___, 765 S.E.2d at 93-94 (Hunter, J., dissenting). DHHS and T.L.H.'s guardian *ad litem* noted an appeal from the Court of Appeals' decision to this Court. We reverse that decision.

The statutory provisions governing a parent's entitlement to the appointment of a guardian *ad litem* in termination of parental rights proceedings have changed over time. Prior to 1 October 2005, N.C.G.S. § 7B-1101(1) provided that a parental guardian *ad litem* must be appointed "[w]here it is alleged that a parent's rights should be terminated pursuant to [N.C.G.S. §] 7B-1111(6), and the incapability to provide proper care and supervision pursuant to that provision is the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or

3. The trial court also terminated the parental rights of T.L.H.'s unknown father.

another similar cause or condition." N.C.G.S. § 7B-1101(1) (2003). From 1 October 2005 until 30 September 2013, N.C.G.S. § 7B-1101.1(c) provided that "the court may appoint a guardian ad litem for a parent if the court determines that there is a reasonable basis to believe that the parent is incompetent or has diminished capacity." *Id.* § 7B-1101.1(c) (2011). Under the pre-October 2013 version of N.C.G.S. § 7B-1101.1(c), the difference between the roles assumed by a guardian *ad litem*, whether substitutive or assistive, depended upon "[t]he extent of the parent's disability." *In re P.D.R.*, ___ N.C. App. ___, ___, 737 S.E.2d 152, 158 (2012). However, effective for juvenile proceedings filed or pending on or after 1 October 2013, the General Assembly amended N.C.G.S. § 7B-1101.1(c) to authorize the appointment of a parental guardian *ad litem* "for a parent who is incompetent in accordance with . . . Rule 17" of the North Carolina Rules of Civil Procedure.[4] N.C.G.S. § 7B-1101.1(c) (2013). An "incompetent adult" is defined as one "who lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition." *Id.* § 35A-1101(7) (2013). As a result, following the enactment of the 2013 amendment to N.C.G.S. § 7B-1101.1, respondent would have only been entitled to the appointment of a guardian ad litem in the event that she was incompetent and would not have been entitled to the continued assistance of a guardian *ad litem* who had been appointed based solely on a finding of diminished capacity.

As the Court of Appeals has previously noted, "[a] trial judge has a duty to properly inquire into the competency of a litigant in a civil trial or proceeding when circumstances are brought to the judge's attention [that] raise a substantial question as to whether the litigant is *non compos mentis.*" *In re J.A.A.*, 175 N.C. App. 66, 72, 623 S.E.2d 45, 49

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4. According to Rule 17(b)(2):

> In actions or special proceedings when any of the defendants are . . . incompetent persons, whether residents or nonresidents of this State, they must defend by general or testamentary guardian, if they have any within this State or by guardian ad litem appointed as hereinafter provided; and if they have no known general or testamentary guardian in the State, and any of them have been summoned, the court in which said action or special proceeding is pending, upon motion of any of the parties, may appoint some discreet person to act as guardian ad litem, to defend in behalf of such . . . incompetent persons . . . .

N.C.G.S. § 1A-1, Rule 17(b)(2) (2003).

(2005) (citation omitted). A trial court's decision concerning whether to appoint a parental guardian *ad litem* based on the parent's incompetence is reviewed on appeal for abuse of discretion. *See State v. Turner*, 268 N.C. 225, 230, 150 S.E.2d 406, 410 (1966) (observing that a trial court's competency determination "rests in the sound discretion of the trial judge in the light of his examination and observation of the particular [individual]"). A trial court's decision concerning whether to conduct an inquiry into a parent's competency is also discretionary in nature. *In re J.A.A.*, 175 N.C. App. at 72, 623 S.E.2d at 49. For that reason, trial court decisions concerning both the appointment of a guardian *ad litem* and the extent to which an inquiry concerning a parent's competence should be conducted are reviewed on appeal using an abuse of discretion standard. *In re M.H.B.*, 192 N.C. App. 258, 261, 664 S.E.2d 583, 585 (2008) (citation omitted). An "[a]buse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988) (citation omitted).

According to both DHHS and T.L.H.'s guardian *ad litem*, Judge Jarrell did, contrary to the decision reached by the Court of Appeals, conduct an inquiry into the issue of whether respondent was incompetent at the pretrial hearing. More specifically, DHHS and T.L.H.'s guardian *ad litem* contend that Judge Jarrell could not have concluded that respondent's guardian *ad litem* "was released by operation of law effective October 1, 2013" without determining that Ms. Bullock had been appointed to serve as respondent's guardian *ad litem* on diminished capacity grounds and that respondent was not entitled to the appointment of a guardian *ad litem* for competency-related reasons. As a result, DHHS and T.L.H.'s guardian *ad litem* contend that Judge Jarrell actually determined that respondent was not incompetent and that no further inquiry into her competence prior to the termination hearing was necessary. We are not persuaded by this contention.

A careful review of the record provides no indication that Judge Jarrell conducted any inquiry into respondent's competence at the pretrial hearing. Although Judge Jarrell apparently assumed that Ms. Bullock had been appointed as respondent's guardian *ad litem* on diminished capacity grounds, Judge Brown's appointment order simply does not indicate whether Ms. Bullock was appointed to act in a substitutive or assistive capacity. In addition, given the absence of a transcript of the pretrial hearing, we have no assurance that Judge Jarrell inquired into the issue of respondent's competence during the course of that proceeding. Finally, we note that Ms. Bullock stood "in for Attorney Edward

Branscomb as Attorney for Mother" at the pretrial hearing even though N.C.G.S. § 7B-1101.1(d) precludes "the guardian ad litem [from] act[ing] as the parent's attorney," N.C.G.S. § 7B-1101.1(d) (2013), which suggests that Ms. Bullock had stopped acting as respondent's guardian *ad litem* by the time of the pretrial hearing, a development that would be consistent with the 1 October 2013 effective date of the current version of N.C.G.S. § 7B-1101.1(c). As a result, we conclude that Judge Jarrell's determination that "[Ms.] Bullock was released by operation of law effective October 1, 2013" does not tend to indicate that Judge Jarrell inquired into respondent's competence at the pretrial hearing and suggests, instead, that the provisions of the pretrial order relating to Ms. Bullock's removal as respondent's guardian *ad litem* reflected a purely ministerial act.

Although we are unable to conclude that an inquiry into respondent's competence was actually conducted during the course of this proceeding, we are equally unable to conclude that the apparent failure to conduct such an inquiry constituted an abuse of discretion. As an initial matter, we note that the standard of review applicable to claims like the one before us in this case is quite deferential. Affording substantial deference to members of the trial judiciary in instances such as this one is entirely appropriate given that the trial judge, unlike the members of a reviewing court, actually interacts with the litigant whose competence is alleged to be in question and has, for that reason, a much better basis for assessing the litigant's mental condition than that available to the members of an appellate court, who are limited to reviewing a cold, written record.

Moreover, evaluation of an individual's competence involves much more than an examination of the manner in which the individual in question has been diagnosed by mental health professionals. Although the nature and extent of such diagnoses is exceedingly important to the proper resolution of a competency determination, the same can also be said of the information that members of the trial judiciary glean from the manner in which the individual behaves in the courtroom, the lucidity with which the litigant is able to express himself or herself, the extent to which the litigant's behavior and comments shed light upon his or her understanding of the situation in which he or she is involved, the extent to which the litigant is able to assist his or her counsel or address other important issues, and numerous other factors. A great deal of the information that is relevant to a competency determination is simply not available from a study of the record developed in the trial court and presented for appellate review. As a result, when the record contains an

appreciable amount of evidence tending to show that the litigant whose mental condition is at issue is not incompetent, the trial court should not, except in the most extreme instances, be held on appeal to have abused its discretion by failing to inquire into that litigant's competence. *Cf. Artesani v. Gritton*, 252 N.C. 463, 467, 113 S.E.2d 895, 898 (1960) (stating that, "[w]hen the court hears evidence to determine competency, its factual conclusion will not be set aside on appeal if there be any evidence to support the finding," since "[t]he weight which the trial judge accords the evidence rests in his discretion").

A careful review of the record developed in the trial court compels the conclusion that sufficient evidence tending to show that respondent was not incompetent existed to obviate the necessity for the trial court to conduct a competence inquiry before proceeding with the termination hearing. Respondent exercised what appears to have been proper judgment in allowing DHHS to take custody of T.L.H. at the hospital shortly after his birth. In addition, respondent demonstrated a reasonable understanding of the proceedings that would inevitably result from that decision when she informed DHHS that she wished to preserve the right to attempt to be reunified with T.L.H. At the 11 July 2013 permanency planning hearing, respondent testified that she had obtained Zyprexa to treat her mental conditions, discussed the necessity for the use of budgeting techniques, demonstrated an understanding of her need to apply for reduced-rate or subsidized housing, and appeared to understand that, given her income limitations, she needed to use her available financial resources carefully. Respondent's testimony at the permanency planning hearing was cogent and gave no indication that she failed to understand the nature of the proceedings in which she was participating or the consequences of the decisions that she was being called upon to make. In addition, respondent signed an apartment lease in November 2013, having previously testified at the permanency planning hearing that obtaining an independent place to live would allow her to become drug-free, given that "the only reason why the drugs was ever exposed to me is because I was living in the environment around it." As a result, the record contains ample support for a determination that respondent understood that she needed to properly manage her own affairs and comprehended the steps that she needed to take in order to avoid the loss of her parental rights in T.L.H.

Acting in reliance on its decision in *In re N.A.L.*, 193 N.C. App. 114, 118-19, 666 S.E.2d 768, 771-72 (2008), the Court of Appeals may have concluded that allegations that a parent has been diagnosed with significant mental health problems, standing alone, suffices to necessitate

an inquiry into the parent's competence. *In re T.L.H.*, ___ N.C. App. at ___, 765 S.E.2d at 90 (stating that "allegations of mental health problems that raise a question regarding a parent's competence require the trial court to inquire into whether a GAL need be appointed"). However, *In re N.A.L.* does not appear to us to require a trial judge to inquire into a parent's competency solely because the parent is alleged to suffer from diagnosable mental health conditions. Instead, *In re N.A.L.* held that, given the particular facts contained in the record developed in that case regarding the parent's mental health issues, an inquiry into the necessity for the appointment of a parental guardian ad litem was required. *In re N.A.L.*, 193 N.C. App. at 119, 666 S.E.2d 772. As a result, assuming that *In re N.A.L.* is, as respondent suggests, a competency rather than a diminished capacity case, *In re N.A.L.* does not stand for the proposition that a trial court must inquire into the necessity for the appointment of a parental guardian ad litem solely because the parent has diagnosable mental health problems. *See In re J.R.W.*, ___ N.C. App. ___, ___, 765 S.E.2d 116, 120 (2014) (noting the Court of Appeals' "prior holdings that evidence of mental health problems is not *per se* evidence of incompetence to participate in legal proceedings"), *disc. rev. denied*, ___ N.C. ___, 767 S.E.2d 840 (2015).[5]

Similarly, the trial court was not required to inquire into the appropriateness of the appointment of a parental guardian *ad litem* simply because DHHS sought to have respondent's parental rights in T.L.H. terminated for mental health-related grounds and requested the trial court to conduct a competency inquiry. In support of its decision to reverse the trial court's termination order and remand this case to that court for further proceedings, the Court of Appeals pointed to "the trial court's reliance on [respondent's multiple ongoing mental health conditions] to support grounds to terminate her parental rights." *In re T.L.H.*, ___ N.C. App. at ___, 765 S.E.2d at 92. Nevertheless, in the aftermath of the enactment of the 2005 amendment to the relevant provisions of Chapter 7B of the North Carolina General Statutes, an allegation that parental rights are subject to termination based upon incapability stemming, directly or indirectly, from a parent's diagnosable mental health conditions does not automatically necessitate the appointment of a parental guardian

5. The facts before the Court in this case, in which there is substantial evidence tending to show that respondent understood the nature of the proceedings in which she was involved and the steps that she needed to take to avoid losing her parental rights in T.L.H., differ substantially from those at issue in *In re N.A.L.*, in which the Court of Appeals made no mention of any evidence tending to indicate that the mother understood the situation in which she found herself, while referring to reports that the mother "repeatedly yelled and shouted profanity" toward her child. 193 N.C. App. at 116, 666 S.E.2d at 770.

ad litem. Although the sort of mental difficulties that might support the termination of a parent's parental rights on the grounds of incapability may well show that the parent is likely to be incompetent, such an inference is not necessarily correct. In other words, while the test for incompetence is whether the parent "lacks sufficient capacity to manage [her] own affairs or to make or communicate important decisions concerning [her] person, family, or property," N.C.G.S. § 35A-1101(7), the trial court is allowed to terminate a parent's parental rights for incapability if "the parent is incapable of providing for the proper care and supervision of the juvenile" due to "substance abuse, mental retardation, mental illness, organic brain syndrome, or any other cause or condition that renders the parent unable or unavailable to parent the juvenile," *id.* § 7B-1111(a)(6). The differences between the standard used in determining competence and the standard used in determining whether a parent's parental rights are subject to termination for incapability prevents us from concluding that the existence of an allegation that a parent's parental rights are subject to termination for incapability necessitates an inquiry into the parent's competence for purposes of the appointment of a substitutive guardian *ad litem*, even if the party initiating the termination proceeding suggests that such an inquiry would be appropriate.

Admittedly, the trial court noted respondent's mental health difficulties in the termination order. However, in addition to stating her mental limitations, the termination order focused upon respondent's apparent unwillingness to make the changes necessary to permit her to regain custody of T.L.H. More specifically, the termination order found that: (1) after adjudication "[t]he mother failed to maintain regular contact with [DHHS]"; (2) "the mother has been noncompliant with the recommended mental health medication regimen"; (3) "[a]lthough the juvenile has been in custody for eight months, the mother only visited the juvenile three times . . . despite having had the opportunity to attend supervised visits once a week"; (4) "[s]ince the juvenile has been in custody, the mother has made no significant progress toward correcting the conditions that led to removal"; and (5) "[t]he mother does not have the willingness to comply with mental health treatment and has declined an assessment and possible treatment for her substance abuse." As a result, the trial court's termination decision rested on considerations other than the fact that respondent appears to have suffered from one or more diagnosable mental health conditions.

We do not, of course, wish to be understood as holding that the trial court would have had no basis for inquiring into respondent's competence in light of her history of serious mental health conditions. A trial

court would have been well within the bounds of its sound discretion to conclude that respondent's lengthy history of serious mental illness raised a substantial question concerning her competence sufficient to justify further inquiry. In fact, such an inquiry in this case might well have been advisable. However, we are unable to conclude that the trial court could not have had a reasonable basis for reaching the opposite result given the coherent manner in which respondent testified at the permanency planning hearing and the other indications in the record tending to show that respondent was aware of, and able to appropriately participate in, the proceedings being conducted before the trial court. As a result, the decision of the Court of Appeals is reversed.[6]

REVERSED.

STATE OF NORTH CAROLINA
v.
FLOYD EDWARD MAY, SR.

No. 510PA13

Filed 11 June 2015

1. Appeal and Error—standard of review—jury instructions—plain error

Plain error was the correct standard of review in determining whether the trial court's instructions to a deadlocked jury were improperly coercive where the instructions were to the entire jury and defendant failed to object. *State v. Wilson*, 363 N.C. 478, relied on by defendant, was distinguished. Applying the plain error standard, the trial court's instructions did not result in an unconstitutional coercion.

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6. The Court of Appeals further determined that Judge Brown erred by failing to delineate the role to be served by respondent's guardian *ad litem*, *In re T.L.H.*, ___ N.C. App. at ___, 765 S.E.2d at 92, and that Judge Jarrell erred by failing to conduct a hearing to determine the role respondent's guardian *ad litem* had filled before removing respondent's guardian *ad litem*, *id.* at ___, 765 S.E.2d at 90. However, respondent did not seek review of or advance any argument challenging either Judge Brown's 18 April 2013 guardian *ad litem* appointment order or Judge Jarrell's 18 November 2013 pretrial order before the Court of Appeals. As a result, since respondent did not properly preserve any challenge to the lawfulness of either of these orders before the Court of Appeals, the Court of Appeals' determinations regarding those orders are reversed as well. *See* N.C. R. App. P. 10.

2. Criminal Law—deadlocked jury—instructions—no plain error

Where the trial court in three separate instructions repeatedly emphasized to deadlocked jurors the importance of their individual convictions, while giving instructions that substantially tracked the language of N.C.G.S. § 15A-1235(b), the court's instruction to continue deliberations for thirty minutes and the isolated mention of a retrial did not rise to the level of being so fundamentally erroneous as to constitute plain error.

On discretionary review pursuant to N.C.G.S. § 7A 31 of a unanimous decision of the Court of Appeals, ___ N.C. App. ___, 749 S.E.2d 483 (2013), finding error in a judgment entered on 19 April 2012 by Judge Howard E. Manning in Superior Court, Alamance County, and ordering that defendant receive a new trial. Heard in the Supreme Court on 17 November 2014.

Roy Cooper, *Attorney General*, *by Teresa M. Postell*, *Assistant Attorney General*, *for the State-appellant.*

Staples S. Hughes, *Appellate Defender*, *by Katherine Jane Allen*, *Assistant Appellate Defender*, *for defendant-appellee.*

EDMUNDS, Justice.

In this case, we consider the correct standard of review to apply when determining whether the trial court's instructions to the jury were improperly coercive, violating Article I, Section 24 of the North Carolina Constitution. We conclude that because defendant failed to object to the pertinent instructions, any error was not preserved and is subject to plain error review. Applying this standard, we hold the trial court's instructions did not result in an unconstitutional coercion of a deadlocked jury. Accordingly, we reverse the decision of the Court of Appeals.

Until early 2011, defendant Floyd Edward May, Sr., an adult male in his mid-sixties, lived with his son, Mike; Mike's wife, Shannon; and their two daughters, T.M. and B.M. Thereafter, defendant began living with a woman in a nearby mobile home but continued to visit his son's family. T.M. was eleven years old and in fifth grade when she testified about her encounters with defendant, whom she called "Pa-Pa." In the summer of 2011, T.M. entered her sister's room, where defendant was lying on a bed, watching television. T.M. related that, while the door was closed,

"Pa-Pa moved [her] shorts to the side and put his wee-wee in [her] moo-moo." When asked, she explained that the term "wee-wee" referred to a penis and "moo-moo" referred to a vagina. She added that defendant also put his "wee-wee" in her mouth during this encounter. Afterwards, T.M. went to the bathroom and felt a burning sensation when she urinated. She did not immediately tell anyone what had happened.

T.M. further testified that, during another occasion that summer, she was in a backyard playhouse with defendant, where they would sometimes watch television together. She saw defendant begin to "play" with his "wee-wee" by "moving it up and down." He then "just started sticking his wee-wee in my moo-moo." Although she felt pain and again experienced burning when she had to urinate, she told no one.

Finally, T.M. testified about defendant's actions in a swimming pool behind her home on 15 July 2011. While she was swimming with defendant, he moved her "bathing suit to the side and put his wee-wee in [her] moo-moo." Her stomach began to hurt "real bad" and she left the pool to tell her mother Shannon about the pain. T.M. also described the incident and asked if she could get pregnant. Shannon telephoned her husband Mike to tell him what she had heard and then took T.M. to a hospital. When Mike confronted defendant about the incident in the pool, defendant responded, "I didn't do that."

Shannon first took T.M. to Alamance Regional Medical Center, where T.M. was examined by Jade Sung, M.D. Dr. Sung began by interviewing T.M., who told her that her Pa-Pa had vaginally penetrated her in the swimming pool. Dr. Sung then conducted an external examination of T.M.'s abdomen and genitalia. The examination revealed no bruising of T.M.'s inner thigh, no contusions on the external genitalia, and no lacerations, tears, rips, or cuts, although Dr. Sung noted some irritation and inflammation around T.M.'s cervix. Based on the examination, Dr. Sung was unable to confirm or deny T.M.'s allegations and characterized the results of the examination as "unremarkable."

T.M. was referred to The University of North Carolina Hospitals in Chapel Hill for further examination, where, on 16 July 2011, she was seen by Rebecca Wheeler, R.N., a specialist in pediatric sexual assault examinations. T.M. told Nurse Wheeler that her "Pa-Pa did something to me yesterday. . . . He put his thing in my moo-moo." T.M. also indicated that she had been experiencing discomfort in her mid-abdominal area since the day before. Nurse Wheeler indicated that her exam of T.M. showed a normal hymen and no bleeding or lacerations, adding that ninety-five percent of children who have been sexually assaulted have no visible injury.

On 8 September 2011, T.M. was taken to Crossroads, a child advocacy center in Burlington, North Carolina, where she was seen by Dana Hagele, M.D., a board certified pediatrician. T.M. indicated to Dr. Hagele that she had visited two hospitals previously because "Pa-Pa did some nasty stuff to [her]." T.M. recounted the details of defendant's actions until she became visibly upset and no longer wanted to talk about it "so it gets out of [her] head." Dr. Hagele conducted a "head-to-toe physical" examination of T.M., including a genital inspection, the results of which were "completely unremarkable."

On 31 October 2011, defendant was indicted for one count of first-degree statutory rape and one count of indecent liberties with a child. The charge of rape arose from events alleged to have occurred in T.M.'s sister's bedroom, while the charge of indecent liberties arose from events alleged to have occurred in the backyard playhouse. The court dismissed the indecent liberties count at the close of all the evidence and we do not address it further. On 3 January 2012, defendant was indicted for an additional count of first-degree statutory rape and for first-degree sex offense with a child. The charge of first-degree sex offense arose from defendant's alleged act of fellatio in T.M.'s sister's bedroom, while the charge of statutory rape arose from events alleged to have occurred in the swimming pool.

Defendant's trial began on 16 April 2012. After all the evidence was presented and the parties completed their arguments, the trial court instructed the jury, which began its deliberations at 11:06 a.m. on 19 April. After taking a lunch break and resuming deliberations, at 2:24 p.m. the jurors sent a note to the court indicating "we are deadlocked." In response, the judge instructed the jurors to continue with their deliberations. He emphasized:

> In the course of your deliberations, each of you should not hesitate to re-examine your views and change your opinion if it is erroneous. But I repeat, none of you should surrender your honest conviction as to the weight or sufficiency of the evidence, solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

The court received another note from the jury at 3:00 p.m. stating that "it is 10-2 and we are hopelessly deadlocked." The trial court again instructed the jury, stating:

> I'm going to ask you to resume your deliberations for another half an hour. I'm not going to stretch it any farther

> past that, but I'm going to ask you to give it your best shot. And it's your choice, not mine, but I'm not going to hot bond you, and we're not going to make you to stay until 5 o'clock, but I'm going to ask you to go back and try again, remembering the instructions I gave you. And at 3:30 I'm going to ask you to come out, unless you've hit, hit the button and reached the decision prior to that. And that's your choice.
>
> I mean, I can't tell you what to do. I appreciate your note letting me know, but I'm going to ask you, since the people have so much invested in this, and we don't want to have to redo it again, but anyway, if we have to we will. That's not my call either. That doesn't belong to me.
>
> I'll ask you just to give us another half hour an hour [sic] and continue to deliberate with a view towards reaching an agreement if it can be done without violence to your individual judgment. As I said earlier, none of you should change your opinion if you, you know, if you feel like that's what your conscience dictates, you stick by it.
>
> So with that, I'm going to ask you to go back and continue.

Thirty minutes later, the jury returned a verdict finding defendant guilty of one count of first-degree statutory rape, but failing to reach a unanimous verdict on the remaining two counts. After questioning the foreman and the other jurors, the trial court declared a mistrial as to the two counts on which the jury deadlocked. The trial court imposed an active sentence of 230 to 285 months of imprisonment for the statutory rape conviction.

Defendant appealed to the Court of Appeals, which reversed his conviction. *State v. May*, ___ N.C. App. ___, 749 S.E.2d 483 (2013). Although defendant raised several issues in his appeal, the Court of Appeals ordered a new trial based on its conclusion that the trial court's 3:00 p.m. instructions to the jury violated N.C.G.S. § 5A-1235(c), which sets out procedures a trial court may follow when a jury indicates that it is deadlocked. *Id.* at ___, 749 S.E.2d at 487. The Court of Appeals further concluded that the error resulted in an unconstitutional coercion of a deadlocked jury, *id.* at ___, 749 S.E.2d at 493, in violation of Article I, Section 24, which states that no criminal defendant shall be convicted but upon a unanimous verdict, N.C. Const. art. I, § 24.

That court then considered the appropriate standard of review of the trial court's error. Although defendant did not object to the charge when it was given, the Court of Appeals cited our decision in *State v. Wilson*, 363 N.C. 478, 484, 681 S.E.2d 325, 330 (2009), for the proposition that this constitutional violation need not be preserved at trial. *May*, ___ N.C. App. at ___, 749 S.E.2d at 489. Accordingly, the Court of Appeals concluded that the State had the burden of proving that the error was harmless beyond a reasonable doubt. *Id.* at ___, 749 S.E.2d at 490. The Court of Appeals then found that the State had not met this burden because no physical evidence suggested defendant's guilt and because the trial court mentioned the time and expense associated with the trial and a possible retrial in the challenged instruction. *Id.* at ___, 749 S.E.2d at 490. Accordingly, the Court of Appeals ordered a new trial.

The State petitioned for discretionary review, raising only the issue whether the Court of Appeals had erred in holding that the State had the burden of proving that the purported error in the trial court's instructions was harmless beyond a reasonable doubt. Although the Court of Appeals considered other issues raised by defendant that might arise on retrial, it found no error in any of them and defendant did not petition for discretionary review. We allowed the State's petition.

[1] This Court has condemned coercive instructions, noting that they may suggest to holdout jurors that they "should surrender their well-founded convictions . . . in deference to the views of the majority," resulting in a majority verdict instead of one that is in fact unanimous. *See State v. McKissick*, 268 N.C. 411, 415, 150 S.E.2d 767, 770-71 (1966) (citation omitted). The State argues that the trial court's instructions were not coercive and did not violate defendant's right to a unanimous verdict. Before discussing the merits of defendant's successful contention below that the instructions were coercive, we consider the proper standard of review to apply when the alleged error was not preserved. We begin with defendant's contention that the instructions violated the Constitution of North Carolina. As noted above, defendant did not raise a contemporaneous objection when the instruction was given, but he argues that this issue is deemed preserved and no objection was necessary.

Defendant relies on *State v. Wilson*, in which the jury notified the court that a problem existed with the foreperson. 363 N.C. at 479-80, 681 S.E.2d at 327. Without objection by counsel for either party, the trial judge conducted several discussions with the foreperson while the other empaneled jurors were absent from the courtroom. *Id.* at 480-82, 681 S.E.2d at 327-28. The defendant argued that this procedure violated his right under the Constitution of North Carolina to a unanimous verdict.

We agreed and held that "where the trial court instructed a single juror in violation of defendant's right to a unanimous jury verdict under Article I, Section 24, the error is deemed preserved for appeal notwithstanding defendant's failure to object." *Id.* at 486, 681 S.E.2d at 331.

However, *Wilson* is distinguishable from the case at bar. Unlike the defendant in *Wilson*, who focused on instructions given to less than the full jury, defendant here argues that the instruction in question, given to the entire panel, was coercive. The Court of Appeals agreed, holding that the rule in *Wilson* applied to coercive instructions. *May*, ___ N.C. App. at ___, 749 S.E.2d at 489. However, this Court carefully constrained the breadth of the holding in *Wilson* so that not all violations of Article I, Section 24 are deemed preserved. This Court specified in *Wilson* that when a violation of Article I, Section 24 involves an instruction to less than all the jurors, that error is preserved as a matter of law. *Wilson*, 363 N.C. at 486, 681 S.E.2d at 331. The pertinent cases cited in *Wilson* to support the determination that the error relating to a unanimous jury verdict was deemed preserved also involve circumstances in which the entire jury panel did not receive the instructions at issue. *See State v. Nelson*, 341 N.C. 695, 698-700, 462 S.E.2d 225, 226-27 (1995); *State v. Ashe*, 314 N.C. 28, 33-36, 39, 331 S.E.2d 652, 655-57, 659 (1985). In contrast, the violation of Article I, Section 24 alleged here involves the content of instructions given to the entire jury panel. Because this alleged error does not fit within the constraints explicitly set out in *Wilson*, that case is inapposite. Thus, we apply the general rule that "failure to raise a constitutional issue at trial generally waives that issue for appeal." *Wilson*, 363 N.C. at 484, 681 S.E.2d at 330 (citing *Ashe*, 314 N.C. at 39, 331 S.E.2d at 659). Nevertheless, because the alleged constitutional error occurred during the trial court's instructions to the jury, we may review for plain error. *State v. Cummings*, 352 N.C. 600, 612-13, 536 S.E.2d 36, 47 (2000) (quoting *State v. Greene*, 351 N.C. 562, 566, 528 S.E.2d 575, 578, *cert. denied*, 531 U.S. 1041, 121 S. Ct. 635, 148 L. Ed. 2d 543 (2000) ("[W]e have previously decided that plain error analysis applies only to instructions to the jury and evidentiary matters.")), *cert. denied*, 532 U.S. 997, 121 S. Ct. 1660, 149 L. Ed. 2d 641 (2001).

A somewhat similar rule applies to contentions that an instruction to a jury violated a statute. In addition to his constitutional argument, defendant contended to the Court of Appeals that the trial judge's 3:00 p.m. instruction violated N.C.G.S. § 15A-1235 and that defendant's failure to object on statutory grounds was preserved as a matter of law. However, we see that in *State v. Aikens*, just as in the case at bar, the defendant alleged that a supplemental jury instruction failed to comply

with N.C.G.S. § 15A-1235 and coerced a jury verdict in violation of Article I, Section 24. 342 N.C. 567, 467 S.E.2d 99 (1996). In considering this claim, we reviewed our holding in *State v. Ashe* and determined that when a trial court is alleged to have violated a mandatory statute, the issue is preserved as a matter of law, but when a trial court is alleged to have violated a permissive statute, we review for plain error if the issue has not been preserved. *Aikens*, 342 N.C. at 577-78, 467 S.E.2d at 106; *see also State v. Bussey*, 321 N.C. 92, 95, 361 S.E.2d 564, 566 (1987). Because subsections 15A-1235(b) and (c) are permissive, we conclude that the appropriate standard of review of defendant's statutory claim is also plain error review.

Under plain error review, a defendant must demonstrate that the trial court committed "a fundamental error." *See State v. Tow*e, 366 N.C. 56, 62, 732 S.E.2d 564, 568 (2012). We find fundamental error only after reviewing the record in its totality and determining that the prejudice to the defendant "had a probable impact on the jury's finding of guilt." *State v. Odom*, 307 N.C. 655, 661, 300 S.E.2d 375, 379 (1983) (citation omitted); *see also State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012). Plain error exists only in exceptional cases in which the error is "one that seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *State v. Grice*, 367 N.C. 753, 764, 767 S.E.2d 312, 321 (2015) (internal quotation marks omitted) (citation omitted) (quoting *Lawrence*, 365 N.C. at 518, 723 S.E.2d at 334). As part of our plain error analysis, in determining whether a trial court's instructions led to a coerced jury verdict in violation of Article I, Section 24 of our constitution, "we must analyze the trial court's actions in light of the totality of the circumstances facing the trial court at the time it acted." *State v. Patterson*, 332 N.C. 409, 416, 420 S.E.2d 98, 101 (1992) (citing *Bussey*, 321 N.C. at 96, 361 S.E.2d at 566-67).[1]

Section 15A-1235 sets out, *inter alia*, permissive guidelines for a judge when instructing a deadlocked jury:

> (a) Before the jury retires for deliberation, the judge must give an instruction which informs the jury that in order to return a verdict, all 12 jurors must agree to a verdict of guilty or not guilty.

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1. We note that the opinion in *Patterson* is ambiguous as to whether the defendant's objection under the Constitution of North Carolina was preserved. However, a defendant is permitted to argue the totality of the circumstances as part of his or her contention that plain error exists.

(b) Before the jury retires for deliberation, the judge may give an instruction which informs the jury that:

(1) Jurors have a duty to consult with one another and to deliberate with a view to reaching an agreement, if it can be done without violence to individual judgment;

(2) Each juror must decide the case for himself, but only after an impartial consideration of the evidence with his fellow jurors;

(3) In the course of deliberations, a juror should not hesitate to reexamine his own views and change his opinion if convinced it is erroneous; and

(4) No juror should surrender his honest conviction as to the weight or effect of the evidence solely because of the opinion of his fellow jurors, or for the mere purpose of returning a verdict.

(c) If it appears to the judge that the jury has been unable to agree, the judge may require the jury to continue its deliberations and may give or repeat the instructions provided in subsections (a) and (b). The judge may not require or threaten to require the jury to deliberate for an unreasonable length of time or for unreasonable intervals.

N.C.G.S. § 15A-1235 (a)-(c) (2013).

We have held that even when jury instructions " 'do not precisely follow the guidelines set forth in N.C.G.S. § 15A-1235,' " no error arises when " 'the essence of the instructions was merely to ask the jury to continue to deliberate' " without being coercive. *Aikens*, 342 N.C. at 579-80, 467 S.E.2d at 107 (citation omitted). In *Aikens*, even though the trial court failed to include some of the language in N.C.G.S. § 15A-1235(b)(2) and (b)(4), we found no error occurred and that plain error analysis was unnecessary because "the trial court's instructions were in no way coercive" and "[o]n the contrary, the trial court repeatedly emphasized to the jurors the importance of their individual convictions." *Id.* at 580, 467 S.E.2d at 107. In *Bussey*, the trial court substantially gave the instructions set forth in N.C.G.S. § 15A-1235, followed later on two occasions by additional instructions that were colloquial versions of the same statutory language. 321 N.C. at 93-95, 361 S.E.2d at 565-66. This Court considered these instructions in their totality and found no error. *Id.* at 97, 361 S.E.2d at 567.

[2] Here, the trial court's initial instructions to the jury similarly followed N.C.G.S. § 15A-1235(b) virtually verbatim, specifically including an instruction that "none of you should change or surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors or for the mere purpose of reaching a verdict." After approximately two hours of deliberation, the jury sent a note indicating they were deadlocked. In response, the trial court informed the jurors that "I don't care how you come out or what you do in the end, that's your choice, but I'm going to ask you to continue on with your deliberations at this point." The court then reinstructed the jury, echoing the language of N.C.G.S. § 5A-1235(b), that:

> In the course of your deliberations, each of you should not hesitate to re-examine your views and change your opinion if it is erroneous. But I repeat, none of you should surrender your honest conviction as to the weight or sufficiency of the evidence, solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

After another thirty minutes of deliberation, the jury indicated that it remained deadlocked. The court again instructed the jury to "continue to deliberate with a view towards reaching an agreement if it can be done without violence to your individual judgment. As I said earlier, none of you should change your opinion if you, you know, if you feel like that's what your conscience dictates, you stick by it." Following this last instruction, the trial court inquired whether both attorneys were satisfied with the instruction, to which defense counsel responded, "Yes, Your Honor. Thank you."

Thus we see that through the course of three separate instructions, "the trial court repeatedly emphasized to the jurors the importance of their individual convictions," *Aikens*, 342 N.C. at 580, 467 S.E.2d at 107, while giving instructions that substantially tracked the language of N.C.G.S. § 15A-1235(b). We find no error in these portions of the instructions.

Defendant argues that the trial court's instructions were erroneous and coercive in two other areas. First, defendant contends that the trial court's 3:00 p.m. instruction forced the jury to return a verdict within thirty minutes. However, the instructions may be read equally well as the judge telling the jurors that, whether or not they reached a verdict, he was not going to keep them late and that their work would be done in half an hour. Second, defendant argues that the trial court's statement pertaining to the expense of the trial and the possible necessity for a

retrial was coercive. Assuming without deciding that the court's instruction to continue deliberations for thirty minutes and the court's isolated mention of a retrial were erroneous, these errors do not rise to the level of being so fundamentally erroneous as to constitute plain error.

Defendant has failed to establish that the trial court plainly erred in its jury instructions. Accordingly, we reverse the holding of the Court of Appeals to the contrary.

REVERSED.

Justice ERVIN took no part in the consideration or decision of this case.

ALICE HART, RODNEY ELLIS, JUDY CHAMBERS, JOHN HARDING LUCAS, MARGARET ARBUCKLE, LINDA MOZELL, YAMILE NAZAR, ARNETTA BEVERLY, JULIE PEEPLES, W.T. BROWN, SARA PILAND, DONNA MANSFIELD, GEORGE LOUCKS, WANDA KINDELL, VALERIE JOHNSON, MICHAEL WARD, T. ANTHONY SPEARMAN, BRITTANY WILLIAMS, RAEANN RIVERA, ALLEN THOMAS, JIM EDMONDS, SASHA VRTUNSKI, PRISCILLA NDIAYE, DON LOCKE, AND SANDRA BYRD, PLAINTIFFS

v.

STATE OF NORTH CAROLINA AND NORTH CAROLINA STATE EDUCATION ASSISTANCE AUTHORITY, DEFENDANTS,

and

CYNTHIA PERRY, GENNELL CURRY, TIM MOORE, AND PHIL BERGER, INTERVENOR-DEFENDANTS

No. 372A14

Filed 23 July 2015

1. Constitutional Law—North Carolina—Article IX, Section 6—Opportunity Scholarship Program—appropriation from general funds—educational initiative outside of public school system

The trial court erred by granting summary judgment in favor of plaintiff taxpayers on their claim alleging that the Opportunity Scholarship Program violated Article IX, Section 6 of the North Carolina Constitution. While Section 6 mandates that funds from certain sources be used exclusively to support the state's public school system, the section does not prohibit the General Assembly

from appropriating funds from the general revenue to support other educational initiatives outside of the public school system.

2. Constitutional Law—North Carolina—Article IX, Section 5—Opportunity Scholarship Program—appropriation from general funds—educational initiative outside of public school system

The trial court erred by granting summary judgment in favor of plaintiff taxpayers on their claim alleging that the Opportunity Scholarship Program violated Article IX, Section 5 of the North Carolina Constitution. Because Article IX, Section 6 permits the General Assembly to appropriate funds from the general revenue to support educational initiatives outside of the public school system, plaintiffs' arguments under Section 5—that the funding for the Program should have gone to the public schools—was without merit.

3. Constitutional Law—North Carolina—Article IX, Section 2(1)—uniformity clause—Opportunity Scholarship Program—educational initiative outside of public school system

The trial court erred by granting summary judgment in favor of plaintiff taxpayers on their claim alleging that the Opportunity Scholarship Program violated Article IX, Section 2(1) of the North Carolina Constitution. The uniformity clause of Section 2(1) applies exclusively to the public school system and does not prohibit the General Assembly from funding educational initiatives outside of that system.

4. Constitutional Law—North Carolina—Article V, Sections 2(1) and 2(7)—Opportunity Scholarship Program—public purpose

The trial court erred by granting summary judgment in favor of plaintiff taxpayers on their claim alleging that the Opportunity Scholarship Program violated Article V, Sections 2(1) and 2(7) of the North Carolina Constitution. By providing lower-income families monetary assistance to procure additional educational opportunities, the Program involved a "reasonable connection with the convenience and necessity of the [State]" and benefitted the public generally. Therefore, the Program was for a public purpose under Sections 2(1) and 2(7).

5. Constitutional Law—North Carolina—Article I, Section 15—Opportunity Scholarship Program—sound basic education

The trial court erred by granting summary judgment in favor

of plaintiff taxpayers on their claim alleging that the Opportunity Scholarship Program violated Article I, Section 15 of the North Carolina Constitution. Article I, Section 15 is not an independent basis for relief under the state constitution, and *Leandro v. State*, 346 N.C. 366 (1997), does not require the state to deliver a sound basic education outside of the public school system. The constitution envisions that children may be education outside of the public school system.

6. Constitutional Law—North Carolina—Article I, Section 19—Opportunity Scholarship Program—religious discrimination claim—standing

The trial court erred by granting summary judgment in favor of plaintiff taxpayers on their claim alleging that the Opportunity Scholarship Program violated Article I, Section 19 of the North Carolina Constitution. Plaintiffs' religious discrimination argument had no effect on the Court's analysis of the public purpose doctrine. Further, plaintiff taxpayers were not in the class of persons allegedly discriminated against by the Program, and they therefore lacked standing to make a standalone claim under Section 19.

HUDSON, J., dissenting.

BEASLEY, J., and ERVIN, J., join in this dissenting opinion.

BEASLEY, J., dissenting.

Appeal pursuant to N.C.G.S. § 7A-27(b)(1) from an order and final judgment granting summary judgment and injunctive relief for plaintiffs entered on 28 August 2014 by Judge Robert H. Hobgood in Superior Court, Wake County. On 10 October 2014, pursuant to N.C.G.S. § 7A-31(a) and (b)(2), and Rule 15(e)(2) of the North Carolina Rules of Appellate Procedure, the Supreme Court on its own initiative certified the case for review prior to determination in the Court of Appeals. Heard in the Supreme Court on 24 February 2015.

Patterson Harkavy LLP, by Burton Craige, Narendra K. Ghosh, and Paul E. Smith; and North Carolina Justice Center, by Carlene McNulty and Christine Bischoff, for plaintiff-appellees.

Roy Cooper, Attorney General, by Lauren M. Clemmons, Special Deputy Attorney General, for defendant-appellants.

Institute for Justice, by Richard D. Komer, pro hac vice, Robert Gall, and Renée Flaherty, pro hac vice; and Shanahan Law Group, PLLC, by John E. Branch, III, for parent intervenor-defendant-appellants Cynthia Perry and Gennell Curry.

Nelson Mullins Riley & Scarborough, LLP, by Noah H. Huffstetler III and Stephen D. Martin, for legislative officer intervenor-defendant-appellants Tim Moore and Phil Berger.

American Civil Liberties Union of North Carolina Legal Foundation, by Christopher Brook, for Americans United for Separation of Church and State, American Civil Liberties Union, American Civil Liberties Union of North Carolina Legal Foundation, Anti-Defamation League, Baptist Joint Committee for Religious Liberty, and Interfaith Alliance Foundation, amici curiae.

Liberty, Life, and Law Foundation, by Deborah J. Dewart; Thomas C. Berg, pro hac vice, University of St. Thomas School of Law (Minnesota); and Christian Legal Society, by Kimberlee Wood Colby, pro hac vice, for Christian Legal Society; North Carolina Christian School Association; Roman Catholic Diocese of Charlotte, North Carolina; Roman Catholic Diocese of Raleigh, North Carolina; North Carolina Family Policy Council; Liberty, Life, and Law Foundation; Association of Christian Schools International; American Association of Christian Schools; and National Association of Evangelicals, amici curiae.

Jane R. Wettach for Education Scholars and Duke Children's Law Clinic, amici curiae.

Tin Fulton Walker & Owen, by Luke Largess; and National Education Association, by Philip Hostak, pro hac vice, for National Education Association, amicus curiae.

UNC Center for Civil Rights, by Mark Dorosin, Managing Attorney, and Elizabeth Haddix, Senior Staff Attorney, for North Carolina Conference of the National Association for the Advancement of Colored People, amicus curiae.

Robinson, Bradshaw & Hinson, P.A., by Richard A. Vinroot and Matthew F. Tilley, for Pacific Legal Foundation, amicus curiae.

MARTIN, Chief Justice.

When assessing a challenge to the constitutionality of legislation, this Court's duty is to determine whether the General Assembly has complied with the constitution. If constitutional requirements are met, the wisdom of the legislation is a question for the General Assembly. *E.g.*, *In re Hous. Bonds*, 307 N.C. 52, 57, 296 S.E.2d 281, 284 (1982). In performing our task, we begin with a presumption that the laws duly enacted by the General Assembly are valid. *Baker v. Martin*, 330 N.C. 331, 334, 410 S.E.2d 887, 889 (1991). North Carolina courts have the authority and responsibility to declare a law unconstitutional,[1] but only when the violation is plain and clear. *State ex rel. Martin v. Preston*, 325 N.C. 438, 449, 385 S.E.2d 473, 478 (1989). Stated differently, a law will be declared invalid only if its unconstitutionality is demonstrated beyond reasonable doubt. *Baker*, 330 N.C. at 334-35, 410 S.E.2d at 889.

In this case plaintiffs challenge the Opportunity Scholarship Program, which allows a small number of students[2] in lower-income families to receive scholarships from the State to attend private school. According to the most recent figures published by the Department of Public Instruction, a large percentage of economically disadvantaged students in North Carolina are not grade level proficient with respect to the subjects tested on the State's end-of-year assessments.[3] Disagreement exists as to the innovations and reforms necessary to address this and other educational issues in our state. Our state and country benefit from the debate between those with differing viewpoints in this quintessentially political dialogue. Such discussions inform the legislative process. But the role of judges is distinguishable, as we neither participate in this dialogue nor assess the wisdom of legislation. Just as the legislative and executive branches of government are expected to operate within their constitutionally defined spheres, so must the courts. *See In re Alamance Cty. Court Facils.*, 329 N.C. 84, 94, 405 S.E.2d 125, 130 (1991) ("Just as

1. *See* N.C. Const. art. IV, § 1; *Bayard v. Singleton*, 1 N.C. 5 (1787) (recognizing the courts' power of judicial review and declaring unconstitutional an act of the legislature infringing upon the right to a trial by jury).

2. In the first year of the Opportunity Scholarship Program, 2300 students were selected to participate. The average daily membership in our State's public and charter schools is approximately 1.5 million students. N.C. Dep't of Pub. Instruction, *Facts and Figures 2012-13*, http://www.dpi.state.nc.us/docs/fbs/resources/data/factsfigures/2012-13figures.pdf (last visited July 21, 2015) (reporting a combined average daily membership of 1,492,793 in public and charter schools during calendar year 2012-13).

3. N.C. Dep't of Pub. Instruction, *2013-14 School Report Cards*, NC School Report Cards, http://www.ncpublicschools.org/src/ (last visited July 21, 2015).

the inherent power of the judiciary is plenary within its branch, it is curtailed by the constitutional definition of the judicial branch and the other branches of government.").[4] Our constitutionally assigned role is limited to a determination of whether the legislation is plainly and clearly prohibited by the constitution. Because no prohibition in the constitution or in our precedent forecloses the General Assembly's enactment of the challenged legislation here, the trial court's order declaring the legislation unconstitutional is reversed.

* * *

I

Under the provisions of the Opportunity Scholarship Program,[5] the State Educational Assistance Authority (the Authority) makes applications available each year "to eligible students for the award of scholarship grants to attend any nonpublic school." N.C.G.S. § 115C-562.2(a) (2014). An "[e]ligible student" is defined as "a student who has not yet received a high school diploma" and who, in addition to meeting other specified criteria, "[r]esides in a household with an income level not in excess of one hundred thirty-three percent (133%) of the amount required for the student to qualify for the federal free or reduced-price lunch program." *Id.* § 115C-562.1(3) (2013). A "[n]onpublic school" is any school that meets the requirements of either Part 1 ("Private Church Schools and Schools of Religious Charter") or Part 2 ("Qualified Nonpublic Schools") of Article 39 of Chapter 115C of the General Statutes. *Id.* § 115C-562.1(5) (2013).

The Authority awards scholarships to the program's applicants, with preference given first to previous scholarship recipients, and then to students in lower-income families and students entering kindergarten or the first grade. *Id.* § 115C-562.2(a). Subject to certain restrictions,

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4. This foundational principle of constitutional law is well established in North Carolina. *See* N.C. Const. art I, § 6 ("The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other."); *see also id.* art. II (describing the legislative sphere of authority); *id.* art. III (describing the executive sphere of authority); *id.* art. IV (describing the judicial sphere of authority).

5. The Opportunity Scholarship Program was ratified by the General Assembly and signed into law by the Governor in July 2013 as part of the "Current Operations and Capital Improvements Appropriations Act of 2013"—the State's budget bill for fiscal years 2013-14 and 2014-15. Current Operations and Capital Improvements Appropriations Act of 2013, ch. 360, sec. 8.29, 2013 N.C. Sess. Laws 995, 1064-69. The program was amended in August of 2014 to its present form, The Current Operations and Capital Improvements Appropriations Act of 2014, ch. 100, sec. 8.25, 2013 N.C. Sess. Laws (Reg. Sess. 2014) 328, 371-73, and is codified as amended in Part 2A to Article 39 of Chapter 115C of the General Statutes, N.C.G.S. §§ 115C-562.1 through -562.7 (2013 & Supp. 2014).

students selected to participate in the program may receive a scholarship grant of up to $4,200 to attend any nonpublic school. *Id.* § 115C-562.2(b) (2014). Once a student has been selected for the program and has chosen a school to attend, the Authority remits the grant funds to the nonpublic school for endorsement, and the parent or guardian "restrictively endorse[s] the scholarship grant funds awarded to the eligible student to the nonpublic school for deposit into the account of [that] school." *Id.* § 115C-562.6 (2013).

A nonpublic school that accepts a scholarship recipient for admission must comply with the requirements of N.C.G.S. § 115C-562.5(a), which include: (1) providing the Authority with documentation of the tuition and fees charged to the student; (2) providing the Authority with a criminal background check conducted on the highest ranking staff member at the school; (3) providing the parent or guardian of the student with an annual progress report, including standardized test scores; (4) administering at least one nationally standardized test or equivalent measure for each student in grades three or higher that measures achievement in the areas of English grammar, reading, spelling, and mathematics; (5) providing the Authority with graduation rates of scholarship program students; and (6) contracting with a certified public accountant to perform a financial review for each school year in which the nonpublic school accepts more than $300,000 in scholarship grants. *Id.* § 115C-562.5(a)(1)-(6) (2014). Nonpublic schools enrolling more than twenty-five Opportunity Scholarship Program students must report the aggregate standardized test performance of the scholarship students to the Authority. *Id.* § 115C-562.5(c) (2014). Furthermore, all nonpublic schools that accept scholarship program students are prohibited from charging additional fees based on a student's status as a scholarship recipient, *id.* § 115C-562.5(b) (2014), and from discriminating with respect to the student's race, color, or national origin, *id.* § 115C-562.5(c1) (2014); *see also* 42 U.S.C. § 2000d (2012). Nonpublic schools that fail to comply with these statutory requirements are ineligible to participate in the program. N.C.G.S. § 115C-562.5(d) (2014).

The Opportunity Scholarship Program also subjects the Authority to certain reporting requirements. Each year, the Authority must provide demographic information and program data to the Joint Legislative Education Oversight Committee. *Id.* § 115C-562.7(b) (2014). The Authority is also required to select an independent research organization to prepare an annual report on "[l]earning gains or losses of students receiving scholarship grants" and on the "[c]ompetitive effects on public school performance on standardized tests as a result of the

scholarship grant program." *Id.* § 115C-562.7(c) (2014). Following submission of these reports to the Joint Legislative Education Oversight Committee and the Department of Public Instruction, "[t]he Joint Legislative Education Oversight Committee shall review [the] reports from the Authority and shall make ongoing recommendations to the General Assembly as needed regarding improving administration and accountability for nonpublic schools accepting students receiving scholarship grants." *Id.*

The Opportunity Scholarship Program is funded by appropriations from general revenues to the Board of Governors of the University of North Carolina, which provides administrative support for the Authority. In fiscal year 2014-15, the General Assembly appropriated a total of $10,800,000 to the program.

II

On 11 December 2013, plaintiff Alice Hart and twenty-four other taxpayers filed a complaint in Superior Court, Wake County, challenging the constitutionality of the Opportunity Scholarship Program under the Constitution of North Carolina.[6]

Plaintiffs' amended complaint asserted five claims for relief, all of which presented facial challenges under the North Carolina Constitution. First, plaintiffs alleged that the Opportunity Scholarship Program "appropriates revenue paid by North Carolina taxpayers to private schools for primary and secondary education" in violation of Article IX, Sections 2(1) and 6, and Article I, Section 15. Second, plaintiffs alleged that the law "appropriates revenue paid by North Carolina taxpayers to private schools for the ostensible purpose of primary and secondary education without those funds being supervised by the Board of Education" in violation of Article IX, Section 5. Third, plaintiffs alleged that the law creates "a non-uniform system of schools for primary and secondary education" in violation of Article IX, Section 2(1). Fourth, plaintiffs alleged that in "transfer[ring] revenue paid by North Carolina taxpayers to private schools without any accountability or requirements ensuring that students will actually receive an education," the law "does not accomplish any public purpose" in violation of Article V, Sections 2(1) and 2(7). Fifth, plaintiffs alleged that in "transfer[ring] revenue paid by North Carolina taxpayers to private schools that are permitted to

6. Although plaintiffs generally represent a cross section of individuals who currently interact or have previously interacted with our state's public schools, plaintiffs' complaint in the present action was made in their capacity as taxpayers of the state.

discriminate against students and applicants on the basis of race, color, religion, or national origin,"[7] the law serves no public purpose and therefore violates Article V, Section 2(1), and Article I, Section 19. Plaintiffs requested a declaration that the scholarship program is unconstitutional under the challenged provisions, as well as a permanent injunction to prevent implementation and enforcement of the legislation.

On cross-motions for summary judgment, the trial court entered an order and final judgment on 28 August 2014, allowing plaintiffs' motion for summary judgment on all claims, denying defendants' and intervenor-defendants' motions for summary judgment,[8] and declaring the Opportunity Scholarship Program unconstitutional on its face. The trial court permanently enjoined implementation of the Opportunity Scholarship Program legislation, including the disbursement of public funds.

Defendants appealed, and this Court, on its own initiative, certified the appeal for immediate review prior to a determination in the Court of Appeals.[9] For the following reasons, we reverse the trial court's order and final judgment declaring the Opportunity Scholarship Program unconstitutional and dissolve the injunction preventing further implementation and enforcement of the challenged legislation.

III

Defendants' appeal from the trial court's order and final judgment presents questions to this Court concerning the construction and interpretation of provisions in the North Carolina Constitution.[10] As the court of last resort in this state, we answer with finality "issues concerning the proper construction and application of North Carolina laws and the Constitution of North Carolina." *Preston*, 325 N.C. at 449, 385 S.E.2d at 479 (citations omitted). Accordingly, our review of the constitutional questions presented is de novo. *Piedmont Triad Reg'l Water Auth. v. Sumner Hills Inc.*, 353 N.C. 343, 348, 543 S.E.2d 844, 848 (2001); *see*

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7. Plaintiffs' allegations concerning a nonpublic school's ability to discriminate based on race, color, or national origin were rendered moot by the passage of N.C.G.S. § 115C-562.5(c1). *See* ch. 100, sec. 8.25(d), 2013 N.C. Sess. Laws (Reg. Sess. 2014) at 371.

8. For purposes of this opinion, we will refer to defendants and intervenor-defendants collectively as "defendants."

9. We also certified the companion case of *Richardson v. State*, No. 384A14, for immediate review, which we decide today in a separate opinion.

10. Plaintiffs have not presented any claims under the United States Constitution.

Craig v. New Hanover Cty. Bd. of Educ., 363 N.C. 334, 337, 678 S.E.2d 351, 354 (2009).

In exercising our de novo review, we apply well-settled principles to assess the constitutionality of legislative acts. At the outset, the North Carolina Constitution is not a grant of power, but a limit on the otherwise plenary police power of the State. *See, e.g.*, *Preston*, 325 N.C. at 448-49, 385 S.E.2d at 478. We therefore presume that a statute is constitutional, and we will not declare it invalid unless its unconstitutionality is demonstrated beyond reasonable doubt. *Baker*, 330 N.C. at 334-35, 410 S.E.2d at 889; *see also Preston*, 325 N.C. at 449, 385 S.E.2d at 478 (stating that an act of the General Assembly will be declared unconstitutional only when "it [is] plainly and clearly the case" (quoting *Glenn v. Bd. of Educ.*, 210 N.C. 525, 529-30, 187 S.E. 781, 784 (1936))). Next, when the constitutionality of a legislative act depends on the existence or nonexistence of certain facts or circumstances, we will presume the existence or nonexistence of such facts or circumstances, if reasonable, to give validity to the statute. *In re Hous. Bonds*, 307 N.C. at 59, 296 S.E.2d at 285 (citing *Martin v. N.C. Hous. Corp.*, 277 N.C. 29, 44, 175 S.E.2d 665, 673 (1970)). Further, a facial challenge to the constitutionality of an act, as plaintiffs have presented here, is the most difficult challenge to mount successfully. *Beaufort Cty. Bd. of Educ. v. Beaufort Cty. Bd. of Comm'rs*, 363 N.C. 500, 502, 681 S.E.2d 278, 280 (2009) (citations omitted). "We seldom uphold facial challenges because it is the role of the legislature, rather than this Court, to balance disparate interests and find a workable compromise among them." *Id.* (citation omitted); *see also Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450-51, 128 S. Ct. 1184, 1191 (2008) (discussing why facial challenges are disfavored). Accordingly, we require the party making the facial challenge to meet the high bar of showing "that there are no circumstances under which the statute might be constitutional." *Beaufort Cty. Bd. of Educ.*, 363 N.C. at 502, 681 S.E.2d at 280 (citation omitted); *see also United States v. Salerno*, 481 U.S. 739, 745, 107 S. Ct. 2095, 2100 (1987) ("[T]he challenger must establish that no set of circumstances exists under which the [a]ct would be valid. The fact that the [act] might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid . . . ."). It is through this lens of constitutional review that we begin our analysis in this case.

A

[1] The first question presented by defendants' appeal is whether Article IX, Section 6 of the state constitution prohibits the General Assembly

from appropriating tax revenues to the Opportunity Scholarship Program, which is not part of our public school system.

Defendants contend that Article IX, Section 6 should not be read as a limitation on the State's ability to spend on education generally. In plaintiffs' view, however, even when the General Assembly explicitly intends, as it did here, to appropriate money for educational scholarships to nonpublic schools, the plain text of Article IX, Section 6 prohibits that option and requires that any and all funds for education be appropriated exclusively for our public school system.

Entitled "State school fund," Article IX, Section 6 provides:

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

N.C. Const. art. IX, § 6.

The manifest purpose of this section is to protect the "State school fund" in order to preserve and support the public school system, not to limit the State's ability to spend on education generally. Section 6 accomplishes this purpose by identifying sources of funding for the State school fund and mandating that funds derived by the State from these sources be "faithfully appropriated for establishing and maintaining in this State a system of free public schools." *City of Greensboro v. Hodgin*, 106 N.C. 182, 186-87, 11 S.E. 586, 587-88 (1890) (quoting a previous version of the provision). The first four clauses of Section 6 identify non-revenue sources of funding, two of which appear to be mandatory and two of which appear to be within the discretion of the General Assembly to otherwise appropriate as it sees fit. The fifth clause (the revenue clause) states that a portion of the State's revenue "may be set apart for that purpose"—meaning for the purpose of "establishing and maintaining a uniform system of free public schools." This clause

recognizes that the General Assembly may choose to designate a portion of the State's general tax revenue as an additional source of funding for the State school fund.

Thus, within constitutional limits, the General Assembly determines how much of the revenue of the State will be appropriated for the purpose of "establishing and maintaining a uniform system of free public schools." Insofar as the General Assembly appropriates a portion of the State's general revenues for the public schools, Section 6 mandates that those funds be faithfully used for that purpose. Article IX, Section 6 does not, however, prohibit the General Assembly from appropriating general revenue to support other educational initiatives. *See Preston*, 325 N.C. at 448-49, 385 S.E.2d at 478 ("All power which is not expressly limited by the people in our State Constitution remains with the people, and an act of the people through their representatives in the legislature is valid unless prohibited by that Constitution." (citations omitted)). Because the Opportunity Scholarship Program was funded from general revenues, not from sources of funding that Section 6 reserves for our public schools, plaintiffs are not entitled to relief under this provision.

Faithful appropriation and use of educational funds was a very real concern to the framers of our constitution. Before the introduction of Article IX, Section 6 in the 1868 Constitution, the Literary Fund, which was devoted to funding public education, was routinely threatened to be used during the Civil War to pay for other expenses and was almost completely depleted by the war's end. *See* M.C.S. Noble, *A History of the Public Schools of North Carolina* 242-49, 272 (1930); Milton Ready, *The Tar Heel State: A History of North Carolina* 263 (2005). The framers of the 1868 Constitution sought to constitutionalize the State's obligation to protect the State school fund. In so doing, our framers chose not to limit the State from appropriating general revenue to fund alternative educational initiatives. Plaintiffs' arguments to the contrary are without merit.

[2] Given our disposition of plaintiffs' claim under Article IX, Section 6, we agree with defendants that plaintiffs are likewise not entitled to relief under Article IX, Section 5. Under Article IX, Section 5, "[t]he State Board of Education shall supervise and administer the free public school system *and the educational funds provided for its support.*" N.C. Const. art. IX, § 5 (emphasis added). Because public funds may be spent on educational initiatives outside of the uniform system of free public schools, plaintiffs' contention that funding for the Opportunity Scholarship Program should have gone to the public schools—and therefore been brought under the supervision and administration of the State Board of Education—is without merit.

[3] The final issue under Article IX presented by defendants' appeal is whether the Opportunity Scholarship Program legislation violates Article IX, Section 2(1). Under Section 2(1), "[t]he General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students." *Id.* art. IX, § 2(1). Plaintiffs contend that "[i]f the uniformity clause has any substance, it means that the State cannot create an alternate system of publicly funded private schools standing apart from the system of free public schools mandated by the Constitution."

Plaintiffs' characterization of the Opportunity Scholarship Program is inaccurate. The Opportunity Scholarship Program legislation does not create "an alternate system of publicly funded private schools." Rather, this legislation provides modest scholarships to lower-income students for use at nonpublic schools of their choice. Furthermore, we have previously stated that the uniformity clause requires that provision be made for public schools of like kind throughout the state. *Wake Cares, Inc. v. Wake Cty. Bd. of Educ.*, 363 N.C. 165, 171-72, 675 S.E.2d 345, 350 (2009). The uniformity clause applies exclusively to the public school system and does not prohibit the General Assembly from funding educational initiatives outside of that system. Accordingly, the Opportunity Scholarship Program does not violate Article IX, Section 2(1).

B

[4] The next question presented by defendants' appeal is whether the appropriation of general revenues to fund educational scholarships for lower-income students is for a public purpose under Article V, Sections 2(1) and 2(7).

Defendants contend that providing lower-income students the opportunity to attend private school "satisfies the State's legitimate objective of encouraging the education of its citizens." Defendants maintain that, in satisfying this objective, appropriations directed to the Opportunity Scholarship Program are made for a public purpose. Plaintiffs contend that the program does not accomplish a public purpose because the program appropriates taxpayer money for educational scholarships to private schools without regard to whether the schools satisfy substantive education standards.

Under Article V, Section 2(1), "[t]he power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away." N.C. Const. art. V, § 2(1). Under Article V, Section 2(7), "[t]he General Assembly may

enact laws whereby the State, any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes only." *Id.* art. V, § 2(7). Because "[t]he power to appropriate money *from* the public treasury is no greater than the power to levy the tax which put the money in the treasury," we subject both legislative powers to the public purpose requirement. *Mitchell v. N.C. Indus. Dev. Fin. Auth.*, 273 N.C. 137, 143, 159 S.E.2d 745, 749-50 (1968).

At the outset, we note that "the fundamental concept underlying the public purpose doctrine" is that "the ultimate gain must be the public's, not that of an individual or private entity." *Maready v. City of Winston-Salem*, 342 N.C. 708, 719, 467 S.E.2d 615, 622 (1996). Thus, in resolving challenges to legislative appropriations under the public purpose clause, this Court's inquiry is discrete—we ask whether the legislative purpose behind the appropriation is public or private. *See id.* at 716, 467 S.E.2d at 620-21; *Mitchell*, 273 N.C. at 144, 159 S.E.2d at 750. If the purpose is public, then the wisdom, expediency, or necessity of the appropriation is a legislative decision, not a judicial decision. *See Maready*, 342 N.C. at 714, 467 S.E.2d at 619. Accordingly, our public purpose analysis does not turn on whether the appropriation will, in the words of plaintiffs, "accomplish" a public purpose.

Likewise, sustaining a legislative appropriation under the public purpose clause does not require a concurrent assessment of whether other constitutional infirmities exist that might render the legislation unconstitutional. If the challenged appropriation is constitutionally infirm on other grounds, proper redress is under the applicable constitutional provisions, not the public purpose clause. Thus, plaintiffs' contentions that the Opportunity Scholarship Program runs afoul of Article I, Sections 15 and 19, due to scholarships being remitted to allegedly "unaccountable" schools or schools that discriminate on the basis of religion, are inapposite to the public purpose analysis.[11]

Our inquiry under Article V, Sections 2(1) and 2(7), therefore, is whether the appropriations made by the General Assembly to fund the Opportunity Scholarship Program are for a public rather than private purpose. In addressing this question, we are mindful of the general proposition articulated by this Court over forty-five years ago: "Unquestionably, the education of residents of this State is a recognized object of State government. Hence, the provision therefor is for a public

11. The independent applicability of Article I, Sections 15 and 19, in this case is discussed in Part III(C) of our opinion.

purpose." *State Educ. Assistance Auth. v. Bank of Statesville*, 276 N.C. 576, 587, 174 S.E.2d 551, 559 (1970) (citing *Jamison v. City of Charlotte*, 239 N.C. 682, 696, 80 S.E.2d 904, 914 (1954); *Green v. Kitchin*, 229 N.C. 450, 455, 50 S.E.2d 545, 549 (1948)).

In determining whether a specific appropriation is for a public purpose, "[t]he term 'public purpose' is not to be narrowly construed." *Madison Cablevision, Inc. v. City of Morganton*, 325 N.C. 634, 646, 386 S.E.2d 200, 207 (1989) (citing *Briggs v. City of Raleigh*, 195 N.C. 223, 226, 141 S.E. 597, 599 (1928)). We have also specifically "declined to 'confine public purpose by judicial definition[, leaving] "each case to be determined by its own peculiar circumstances as from time to time it arises." ' " *Maready*, 342 N.C. at 716, 467 S.E.2d at 620 (alteration in original) (quoting *Stanley v. Dep't of Conservation & Dev.*, 284 N.C. 15, 33, 199 S.E.2d 641, 653 (1973)). Indeed, "[a] slide-rule definition to determine public purpose for all time cannot be formulated; the concept expands with the population, economy, scientific knowledge, and changing conditions." *Id.* (quoting *Mitchell*, 273 N.C. at 144, 159 S.E.2d at 750). Although the initial determination of the General Assembly in passing the law is given "great weight" by this Court, *Madison Cablevision*, 325 N.C. at 644-45, 386 S.E.2d at 206, "the ultimate responsibility for the public purpose determination rests, of course, with this Court," *id.* at 645, 386 S.E.2d at 206. "[T]wo guiding principles have been established for determining that a particular undertaking by [the State] is for a public purpose: (1) it involves a reasonable connection with the convenience and necessity of the [State]; and (2) the activity benefits the public generally, as opposed to special interests or persons." *Maready*, 342 N.C. at 722, 467 S.E.2d at 624 (quoting *Madison Cablevision*, 325 N.C. at 646, 386 S.E.2d at 207 (citations omitted)).

"As to the first prong, whether an activity is within the appropriate scope of governmental involvement and is reasonably related to communal needs may be evaluated by determining how similar the activity is to others which this Court has held to be within the permissible realm of governmental action." *Id.*; *see also Green v. Kitchin*, 229 N.C. 450, 455, 50 S.E.2d 545, 549 (1948) ("A tax or an appropriation is certainly for a public purpose if it is for the support of government, or for any of the recognized objects of government." (citations omitted)). Here, the provision of monetary assistance to lower-income families so that their children have additional educational opportunities is well within the scope of permissible governmental action and is intimately related to the needs of our state's citizenry. *See State Educ. Assistance Auth.*, 276 N.C. at 587, 174 S.E.2d at 559 ("Unquestionably, the education of residents

of this State is a recognized object of State government."); *see also Rowan Cty. Bd. of Educ. v. U.S. Gypsum Co.*, 332 N.C. 1, 10, 418 S.E.2d 648, 655 (1992) ("Education is a governmental function so fundamental in this state that our constitution contains a separate article entitled 'Education.' "); *Delconte v. State*, 313 N.C. 384, 401-02, 329 S.E.2d 636, 647 (1985) ("We also recognize that the state has a compelling interest in seeing that children are educated and may, constitutionally, establish minimum educational requirements and standards for this education.").

In *State Education Assistance Authority v. Bank of Statesville*, for example, we approved the use of revenue bond proceeds to "make loans to meritorious North Carolinians of slender means" for the purpose of "minimiz[ing] the number of qualified persons whose education or training is interrupted or abandoned for lack of funds." 276 N.C. at 587, 174 S.E.2d at 559. Observing that "[t]he people of North Carolina constitute our State's greatest resource," we held that "bond proceeds are used for a *public purpose* when used to make such loans." *Id.*

Similarly, in *Hughey v. Cloninger* we addressed the legality of an appropriation made by the Gaston County Board of Commissioners to a private school for dyslexic children. 297 N.C. 86, 88, 95, 253 S.E.2d 898, 900, 903 (1979). Although we held that the Board of Commissioners lacked statutory authority to make such an appropriation, we stated, albeit in obiter dictum, that had there been statutory authority, such an appropriation "would have presented no 'public purpose' difficulties as it is well established that both appropriations and expenditures of public funds for the education of the citizens of North Carolina are for a public purpose." *Id.* at 95, 253 S.E.2d at 903-04. We therefore conclude that the appropriations made to the Opportunity Scholarship Program involve a "reasonable connection with the convenience and necessity of the [State]." *Maready*, 342 N.C. at 722, 467 S.E.2d at 624 (quoting *Madison Cablevision*, 325 N.C. at 646, 386 S.E.2d at 207).

As to the second prong of the public purpose inquiry, whether "the activity benefits the public generally, as opposed to special interests or persons," *id.* (quoting *Madison Cablevision*, 325 N.C. at 646, 386 S.E.2d at 207), "[i]t is not necessary, in order that a use may be regarded as public, that it should be for the use and benefit of every citizen in the community," *id.* at 724, 467 S.E.2d at 625 (quoting *Briggs*, 195 N.C. at 226, 141 S.E. at 599-600). "[A]n expenditure does not lose its public purpose merely because it involves a private actor. Generally, if an act will promote the welfare of a state or a local government and its citizens, it is for a public purpose." *Id.*; *see also State Educ. Assistance Auth.*, 276 N.C.

at 588, 174 S.E.2d at 560 ("[T]he fact that the individual obtains a private benefit cannot be considered sufficient ground to defeat the execution of 'a paramount public purpose.' " (quoting *Clayton v. Kervick*, 52 N.J. 138, 155, 244 A.2d 281, 290 (1968))).

The promotion of education generally, and educational opportunity in particular, is of paramount public importance to our state. Indeed, borrowing language from the Northwest Ordinance of 1787, our constitution preserves the ethic of educational opportunity, declaring that "[r]eligion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and *the means of education* shall forever be encouraged." N.C. Const. art. IX, § 1 (emphasis added). Although the scholarships at issue here are available only to families of modest means, and therefore inure to the benefit of the eligible students in the first instance, and to the designated nonpublic schools in the second, the ultimate beneficiary of providing these children additional educational opportunities is our collective citizenry. *Cf. Maready*, 342 N.C. at 724, 467 S.E.2d at 625 (recognizing that an expenditure providing an "incidental private benefit" is for a public purpose if it serves "a primary public goal"). Accordingly, the appropriations made by the General Assembly for the Opportunity Scholarship Program were for a public purpose under Article V, Sections 2(1) and 2(7).

C

[5] The next issue presented by defendants' appeal concerns the independent applicability, if any, of Article I, Section 15 to plaintiffs' claims. Article I, Section 15 declares: "The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right." N.C. Const. art. I, § 15. This constitutional provision states a general proposition concerning the right to the privilege of education, the substance of which is detailed in Article IX. Article I, Section 15 is not an independent restriction on the State. *See generally* John V. Orth & Paul Martin Newby, *The North Carolina State Constitution* 62-63 (2d ed. 2013).

Plaintiffs rely on Article I, Section 15 and *Leandro v. State*, 346 N.C. 336, 488 S.E.2d 249 (1997), a case challenging the adequacy of public school funding, for the proposition that "public funds spent for education must go to institutions that will provide meaningful educational services—specifically, to institutions with a sufficient curriculum and competent teachers." Because the Opportunity Scholarship Program legislation does not require that participating nonpublic schools meet the sound basic education standard announced in *Leandro*, 346 N.C.

at 347, 488 S.E.2d at 255, or impose regulatory standards approximating those placed on our public schools in Chapter 115C of the General Statutes, plaintiffs contend that the scholarship program accomplishes no public purpose and is constitutionally inadequate.[12]

As stated above, Article I, Section 15 has no effect on our disposition with respect to plaintiffs' public purpose claim. In its order and final judgment, however, the trial court purported to grant independent relief to plaintiffs under Article I, Section 15, concluding that the Opportunity Scholarship Program legislation fails to " 'guard and maintain' the right of the people to the privilege of education" by "appropriating taxpayer funds to educational institutions that are not required to meet educational standards" and by "expending public funds so that children can attend private schools." To the extent that plaintiffs rely on Article I, Section 15 as an independent basis of relief, we agree with defendants that such reliance is misplaced.

It is axiomatic that the responsibility *Leandro* places on the State to deliver a sound basic education has no applicability outside of the education delivered in our public schools. In *Leandro* we stated that a public school education that "does not serve the purpose of preparing students to participate and compete in the society in which they live and work is devoid of substance and is constitutionally inadequate." 346 N.C. at 345, 488 S.E.2d at 254. We concluded that "Article I, Section 15 *and* Article IX, Section 2 of the North Carolina Constitution combine to guarantee every child of this state an opportunity to receive a sound basic education *in our public schools.*" Id. at 347, 488 S.E.2d at 255 (emphases added). Thus, *Leandro* does not stand for the proposition that Article I, Section 15 independently restricts the State outside of the public school context.

Furthermore, our constitution specifically envisions that children in our state may be educated by means outside of the public school system. *See* N.C. Const. art. IX, § 3 ("The General Assembly shall provide

12. Plaintiffs acknowledge that at least some nonpublic schools may be able to provide scholarship students a meaningful education. Even so, plaintiffs contend that "[t]he State has an affirmative obligation to ensure that public funds are used to accomplish a public purpose" and that, without built-in accountability standards, the State cannot ensure that the Opportunity Scholarship Program will accomplish its intended purposes as to each scholarship recipient. In making this argument, plaintiffs would require the State to demonstrate that the program operates constitutionally in all circumstances, rather than accepting the burden of showing that there is no set of circumstances under which the law could operate in a constitutional manner.

that every child of appropriate age and of sufficient mental and physical ability shall attend the public schools, *unless educated by other means*." (emphasis added)); *see also Delconte*, 313 N.C. at 385, 400-01, 329 S.E.2d at 638, 646-47 (concluding that home school instruction did not violate compulsory attendance statutes and noting that a contrary holding would raise a serious constitutional question under the North Carolina Constitution). Thus, even if Article I, Section 15 could serve as an independent basis of relief, there is no merit in the argument that a legislative program designed to increase educational opportunity in our state is one that fails to "guard and maintain" the "right to the privilege of education."

[6] The final issue presented by defendants' appeal concerns plaintiffs' Article I, Section 19 religious discrimination claim. Article I, Section 19 declares, in pertinent part, "[n]o person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, *religion*, or national origin." N.C. Const. art. I, § 19 (emphasis added). Plaintiffs couch their religious discrimination claim, both for justiciability purposes and with respect to the merits of the claim, in terms of the public purpose doctrine. In short, plaintiffs contend that the Opportunity Scholarship Program accomplishes no public purpose because it allows funding for educational scholarships to schools that may discriminate on the basis of religion. Again, our analysis of the public purpose doctrine made clear that Article I, Section 19, like Article I, Section 15, has no effect on our disposition with respect to plaintiffs' public purpose claim.

With respect to the independent applicability of Article I, Section 19 as a stand-alone claim, defendants have maintained throughout this litigation that such a claim is not justiciable in this case because plaintiffs, as taxpayers of the state, lack standing. Specifically, defendants contend that plaintiffs have suffered no injury in fact because they are not in the class of persons against which the program allegedly discriminates. We agree and therefore hold that plaintiffs' Article I, Section 19 claim must be dismissed.

Generally, "a taxpayer has standing to bring an action against appropriate government officials for the alleged misuse or misappropriation of public funds." *Goldston v. State*, 361 N.C. 26, 33, 637 S.E.2d 876, 881 (2006). Yet, "[a] taxpayer, as such, does not have standing to attack the constitutionality of any and all legislation." *Nicholson v. State Educ. Assistance Auth.*, 275 N.C. 439, 447, 168 S.E.2d 401, 406 (1969) (citations omitted). "[A] person who is seeking to raise the question as to the validity of a discriminatory statute has no standing for that purpose

unless he belongs to the class which is prejudiced by the statute." *In re Martin*, 286 N.C. 66, 75, 209 S.E.2d 766, 773 (1974) (quoting 16 Am. Jur. 2d *Constitutional Law* § 123 (1964)). Here plaintiffs are taxpayers of the state, not eligible students alleged to have suffered religious discrimination as a result of the admission or educational practices of a nonpublic school participating in the Opportunity Scholarship Program. Because eligible students are capable of raising an Article I, Section 19 discrimination claim on their own behalf should the circumstances warrant such action, plaintiffs have no standing to assert a direct discrimination claim on the students' behalf.

IV

"The General Assembly has the right to experiment with new modes of dealing with old evils, except as prevented by the Constitution." *Redev. Comm'n v. Sec. Nat'l Bank of Greensboro*, 252 N.C. 595, 612, 114 S.E.2d 688, 700 (1960); s*ee also New State Ice Co. v. Liebmann*, 285 U.S. 262, 311, 52 S. Ct. 371, 386-87 (1932) (Brandeis & Stone, JJ., dissenting) (indicating that an individual state may serve as a laboratory of democracy and experiment with new legislation in order to meet changing social and economic needs). In this case the General Assembly seeks to improve the educational outcomes of children in lower-income families. The mode selected by the General Assembly to effectuate this policy objective is the Opportunity Scholarship Program.

When, as here, the challenged legislation comports with the constitution, the wisdom of the enactment is a decision for the General Assembly. As this Court has previously recognized, "[i]t may be that the measure may prove eventually to be a disappointment, and is ill advised, but the wisdom of the enactment is a legislative and not a judicial question." *Sec. Nat'l Bank of Greensboro*, 252 N.C. at 612, 114 S.E.2d at 700. To the extent that plaintiffs disagree with the General Assembly's educational policy decision as expressed in the Opportunity Scholarship Program, their remedy is with the legislature, not the courts. Our review is limited to a determination of whether plaintiffs have demonstrated that the program legislation plainly and clearly violates our constitution. Plaintiffs have made no such showing in this case. Accordingly, the trial court erred in declaring the Opportunity Scholarship Program unconstitutional. We therefore reverse the trial court's order and final judgment.

REVERSED.

Justice HUDSON dissenting.

Because the Opportunity Scholarship Program provides for the spending of taxpayer money on private schools without incorporating any standards for determining whether students receive a sound basic—or indeed, any—education, I conclude that the program violates the North Carolina Constitution in two respects. As a result, I must respectfully dissent.

First, the Opportunity Scholarship Program (also known as the "voucher program") violates the requirements of Article V, Sections 2(1) and 2(7) that public funds be spent for public purposes only. "The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away." N.C. Const. art. V, § 2(1). Additionally, "[t]he General Assembly may enact laws whereby the State, any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes only." *Id.* § 2(7). Second, in so doing, the spending authorized under the voucher program also violates Article I, Section 15, which states: "The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right." *Id.* art. I, § 15.

In its order the trial court includes the following among the "Undisputed Material Facts":

> 4. Private schools that receive scholarship funds are (1) not required to be accredited by the State Board of Education or any other state or national institution; (2) not required to employ teachers or principals who are licensed or have any particular credentials, degrees, experience, or expertise in education; (3) not subject to any requirements regarding the curriculum that they teach; (4) not required to provide a minimum amount of instructional time; and (5) not prohibited from discriminating against applicants or students on the basis of religion. *See* N.C. Gen. Stat. § 115C-562.1 *et seq*.
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> . . . .
>
> 6. Of the 5,556 scholarship applicants, 3,804 applicants identified 446 private schools they planned to attend. Of those 446 schools, 322 are religious schools and 117 are independent schools. Of the 322 religious schools

> scholarship recipients planned to attend, 128 are accredited by some organization and 194 are not accredited by any organization. Of the 117 independent schools scholarship recipients planned to attend, 58 are accredited by some organization and 59 are not accredited by any organization.

The trial court then reached the following conclusions of law, among others:

> 3. The Court concludes from the record beyond a reasonable doubt that the [Opportunity Scholarship Program] Legislation funds private schools with taxpayer dollars as an alternative to the public school system in direct contravention of Article [I], Section[ ] 15 . . . and Article V, Sections 2(1) and (7) of the North Carolina Constitution. The legislation unconstitutionally
>
> . . . .
>
> b. appropriates public funds for education in a manner that does not accomplish a public purpose, in violation of Article V, Sections 2(1) and (7), in particular by appropriating funds to private primary and secondary schools without regard to whether these schools satisfy substantive educational standards: appropriating taxpayer funds to unaccountable schools does not accomplish a public purpose;
>
> . . . .
>
> e. fails to "guard and maintain" the right of the people to the privilege of education in violation of Article I, Section 15 by appropriating taxpayer funds to educational institutions that are not required to meet educational standards, including curriculum and requirements that teachers and principals be certified[.]
>
> . . . .
>
> 4. The General Assembly fails the children of North Carolina when they are sent with taxpayer money to private schools that have no legal obligation to teach them anything.

As noted above, these facts are undisputed, and in my view, these conclusions are correct.

In *Madison Cablevision, Inc. v. City of Morganton* this Court articulated a two-part test for determining if a spending statute complies with the requirements of the North Carolina Constitution as found in Article V, Section 2(1), which is quoted above and known as the "public purpose" clause. 325 N.C. 634, 646, 386 S.E.2d 200, 207 (1989). As noted by the majority, while "[t]he initial responsibility for determining what is and what is not a public purpose rests with the legislature" and "its determinations are entitled to great weight," "the ultimate responsibility for the public purpose determination rests, of course, with this Court." *Id.* at 644-45, 386 S.E.2d at 206 (internal citations omitted). Further, in *Stanley v. Department of Conservation and Development* this Court articulated the following principle regarding public purpose expenditures: "In determining what is a public purpose the courts look not only to the ends sought to be attained but also 'to the means to be used.' " 284 N.C. 15, 34, 199 S.E.2d 641, 653 (1973) (citations omitted), *abrogated in part on other grounds by Madison Cablevision*, 325 N.C. at 647-48, 386 S.E.2d at 208, *and superseded by constitutional amendment*, N.C. Const. art V, §§ 2(7), 9. Therefore, I conclude that the majority's assertion that "our public purpose analysis does not turn on whether the appropriation will . . . 'accomplish' a public purpose" is contrary to our precedent. It is precisely this determination that we are called upon to undertake here. To that end, this Court has articulated "[t]wo guiding principles" for determining whether an expenditure of tax funds is for a public purpose. *Madison Cablevision*, 325 N.C. at 646, 386 S.E.2d at 207 (citations omitted) (involving operation of a public enterprise by a municipality). A governmental expenditure satisfies the public purpose clause if: "(1) it involves a reasonable connection with the convenience and necessity of the particular [jurisdiction], and (2) the activity benefits the public generally, as opposed to special interests or persons." *Id.*

Defendants assert, and I agree with the majority, that our courts have long held that education generally serves a public purpose. *See, e.g.*, *State Educ. Assistance Auth. v. Bank of Statesville*, 276 N.C. 576, 587, 174 S.E.2d 551, 559 (1970) ("Unquestionably, the education of residents of this State is a recognized object of State government. Hence, provision therefor is for a public purpose." (citations omitted)). I further agree with the majority that, in principle, "the provision of monetary assistance to lower-income families so that their children have greater educational opportunities is well within the scope of permissible governmental action and is intimately related to the needs of our state's citizenry."

Nonetheless, I cannot agree that the spending of taxpayer funds on private school education through the Opportunity Scholarship Program here serves "public purposes only" as our constitution requires. N.C. Const. art. V, § 2(1). In *Leandro v. State* this Court concluded that "the right to education provided in the state constitution is a right to a sound basic education. An education that does not serve the purpose of preparing students to participate and compete in the society in which they live and work is devoid of substance and is constitutionally inadequate." 346 N.C. 336, 345, 488 S.E.2d 249, 254 (1997). We went on to say in *Hoke County Board of Education v. State* that a sound basic education should include an "effective instructional program" taught by "competent, certified, well-trained" teachers and led by "well-trained competent" principals. 358 N.C. 605, 636, 599 S.E.2d 365, 389 (2004). Admittedly, this is the standard we have set for our public schools, not our private ones, and it is conceivable that we would set a less comprehensive substantive standard for private schools. However, a large gap opens between *Leandro*-required standards and no standards at all, which is what we have here. When taxpayer money is used, the total absence of standards cannot be constitutional.

Before the legislature created the Opportunity Scholarship Program, taxpayer money had not been used to directly finance any part of a private school education. The expenditure of public taxpayer funds brings the Opportunity Scholarship Program squarely within the requirements of Article V, Sections 2(1) and 2(7). As the trial court noted, the schools that may receive Opportunity Scholarship Program money have no required teacher training or credentials and no required curriculum or other means of measuring whether the education received by students at these schools prepares them "to participate and compete in the society in which they live and work." *Leandro*, 346 N.C. at 345, 488 S.E.2d at 254. As we have observed in *State Education Assistance Authority v. Bank of Statesville*, "[t]he people of North Carolina constitute our State's greatest resource." 276 N.C. at 587, 174 S.E.2d at 559. Educating our citizens plants the seeds for their participation, and when we are able to reap the rewards of having an educated citizenry, we can see that our people are our greatest resource. *See*, *e.g.*, *Saine v. State*, 210 N.C. App. 594, 604-05, 709 S.E.2d 379, 388 (2011) ("Educating North Carolinians certainly promotes the welfare of our State, particularly at a time when unemployment is high and many jobs that have historically not required education beyond a high school diploma, or its equivalent, are rapidly disappearing."). Therefore, while students enrolled in private schools may be receiving a fine education, if taxpayer money is spent on a private school education that does not prepare them to function

in and to contribute to our state's society, that spending cannot be for "public purposes only." In my view, spending on private schools through the Opportunity Scholarship Program, which includes no means to measure the quality of the education, cannot satisfy the second prong of the *Madison Cablevision* test. The main constitutional flaw in this program is that it provides no framework at all for evaluating any of the participating schools' contribution to public purposes; such a huge omission is a constitutional black hole into which the entire program should disappear.

I am not persuaded by any of defendants' arguments that the program, as created, contains standards that are constitutionally relevant or adequate. Defendants assert that "layers" of accountability standards are built into the Opportunity Scholarship Program. I find none of these arguments convincing. First, defendants argue that the "educational marketplace" will regulate the quality of the education provided by participating schools. Defendants assert that parents will not send their children to schools that do not provide a solid education or adequately prepare students for college or beyond. This may be true, but marketplace standards are not a measure of constitutionality. To the contrary, this Court must insulate constitutional standards from the whims of the marketplace. *See Maready v. City of Winston-Salem*, 342 N.C. 708, 739, 467 S.E.2d 615, 634 (1996) (Orr, J., dissenting) ("While economic times have changed and will continue to change, the philosophy that constitutional interpretation and application are subject to the whims of 'everybody's doing it' cannot be sustained.").

In a related argument, both intervenor legislative officers and intervenor parents contend that, because parents choose the private schools, the program is "directly accountable to the parents." This argument serves only to underscore that the program serves the private interests of the particular families and not the public good. While families are surely entitled to choose schools for their children according to their interests, a program like the Opportunity Scholarship Program that spends taxpayer money must, to be constitutional, serve "public purposes only."

Second, defendants look to the statutory requirements governing all private and nonpublic schools in North Carolina. These standards relate to attendance, health, and safety, and also require standardized testing at certain intervals. *See* N.C.G.S. §§ 115C-547 to -562 (2013). Here, however, we are not considering standards for private schools that receive no public funding. Those schools are not governed by the same constitutional requirements as schools receiving public funding; they need not serve "public purposes only." When considering these statutory standards in a

public purpose context, it is clear that they do not help measure whether the students enrolled are receiving an education that prepares them to function in our state's society. Even the requirement regarding standardized testing falls short: that provision simply mandates that all private schools "administer, at least once in each school year, a nationally standardized test . . . to all students enrolled or regularly attending grades three, six, and nine." *Id.* § 115C-549; *see also id.* § 115C-557. A similar testing requirement exists for eleventh grade students. *Id.* § 115C-550; *see also id.* § 115C-558. These testing standards do not specify that students take any particular test, nor do they require any minimum result. When a wide range of testing options are available and administered, it can be difficult to compare results across schools (a tool which is regularly used to determine the efficacy of our public schools). While the regulations governing private schools do require comparisons with public school populations, these provisions impose no consequences, regardless of test results. Moreover, the standards require no accreditation of schools and no particular training or certification of teachers. As a result, these standards fail to ensure that spending on these schools through public Opportunity Scholarship Program funds is for any public purpose.

Third, defendants point to statutes regulating schools participating in the Opportunity Scholarship Program. In addition to the above requirements for private and nonpublic schools, schools wishing to participate in the program must also:

> (1) Provide to the [State Education Assistance] Authority documentation for required tuition and fees charged to the student by the nonpublic school.
>
> (2) Provide to the Authority a criminal background check conducted for the staff member with the highest decision-making authority, as defined by the bylaws, articles of incorporation, or other governing document, to ensure that person has not been convicted of any crime listed in G.S. 115C-332.
>
> (3) Provide to the parent or guardian of an eligible student, whose tuition and fees are paid in whole or in part with a scholarship grant, an annual written explanation of the student's progress, including the student's scores on standardized achievement tests.
>
> (4) Administer, at least once in each school year, a nationally standardized test or other nationally standardized

> equivalent measurement selected by the chief administrative officer of the nonpublic school to all eligible students whose tuition and fees are paid in whole or in part with a scholarship grant enrolled in grades three and higher. The nationally standardized test or other equivalent measurement selected must measure achievement in the areas of English grammar, reading, spelling, and mathematics. Test performance data shall be submitted to the Authority by July 15 of each year. Test performance data reported to the Authority under this subdivision is not a public record under Chapter 132 of the General Statutes.
>
> (5) Provide to the Authority graduation rates of the students receiving scholarship grants in a manner consistent with nationally recognized standards.
>
> (6) Contract with a certified public accountant to perform a financial review, consistent with generally accepted accounting principles, for each school year in which the school accepts students receiving more than three hundred thousand dollars ($300,000) in scholarship grants awarded under this Part.

Id. § 115C-562.5(a) (2014). Like the standards referenced above for private schools in general, none of these additional requirements relates to the quality of education received by enrolled students. Simply mandating that a report card be sent home to parents provides no guarantee that the education received is sufficient. And the same problems exist as articulated above regarding the requirements to administer standardized tests.

Finally, defendants point out the Opportunity Scholarship Program is required by statute to report to the General Assembly. Under Section 115C-562.7, the program's overseers must report annually to the legislature specific administrative statistics (relating to enrollment numbers, student demographics, and funds received), as well as "[l]earning gains or losses of students receiving scholarship grants." *Id.* § 115C-562.7 (2014). While the data will allow the legislature insight into the successes of the program, such reporting does not determine constitutionality. First, the legislature is under no obligation to act on the reports. Second, as we held long ago in *Madison Cablevision*, it is ultimately up to this Court to determine if public spending serves a public purpose. 325 N.C. at 644-45, 386 S.E.2d at 206. Legislative oversight does not automatically make a

controversial program constitutional, particularly when, as here, the law creating and governing the program mandates no action.

Defendants themselves admit that the program lacks the standards outlined in *Hoke County* for the employment of certified teachers and principals and for curriculum. *Hoke Cty. Bd. of Educ.*, 358 N.C. at 636, 599 S.E.2d at 389. Despite this concession, they argue that because this is a facial challenge to the statute, plaintiffs must show that the program is unconstitutional under all conceivable facts and circumstances. *See, e.g.*, *Martin v. N.C. Hous. Corp.*, 277 N.C. 29, 44, 175 S.E.2d 665, 673 (1970). To that end, defendants argue that even if substantive standards were required under our state constitution, some of the participating private schools would meet those standards. This argument falls short, however, because our state constitution mandates that *every child* obtaining an education paid for by public funds receive an education that prepares him to succeed in society, and because we are analyzing the statutory framework of the program, not the merits of a specific school. N.C. Const. art. I, § 15; id. art. IX, § 2(1); *Leandro*, 346 N.C. at 351, 488 S.E.2d at 257 (concluding that our state constitution "requires that *all children* have the opportunity for a sound basic education" (emphasis added)). While I acknowledge that "[w]e seldom uphold facial challenges because it is the role of the legislature, rather than this Court, to balance disparate interests and find a workable compromise among them," it is important to remember that we must also "measure the balance struck in the statute against the minimum standards required by the constitution." *Beaufort Cty. Bd. of Educ. v. Beaufort Cty. Bd. of Comm'rs*, 363 N.C. 500, 502, 681 S.E.2d 278, 280-81 (2009) (citation omitted). Here those minimum standards require that children receiving a publicly funded education obtain an education that serves a public purpose. The statute at issue here creates a program that fails to incorporate any requirement to determine, much less ensure, that any, let alone all, children enrolled are receiving a real education; as such, the statute cannot survive a facial challenge.

Private schools are free to provide whatever education they deem fit within the governing statutes' requirements. When parents send their children to any private school of their choosing on their own dime, as they are free to do, that education need not satisfy our constitutional demand that it be a for a public purpose. However, when public funds are spent to enable a private school education, that spending must satisfy the public purpose clause of our constitution by preparing students to contribute to society. Without meaningful standards meant to ensure that this or any minimum threshold is met, public funds cannot be spent constitutionally through this Opportunity Scholarship Program.

As stated above, I would not necessarily impose the same detailed requirements on our private schools receiving public funds as are imposed on purely public schools by *Leandro* and its progeny. I do conclude that such spending must include some standards by which to measure compliance with the public purpose doctrine; the complete lack of any such standards in North Carolina's voucher program makes determining such compliance impossible. It is instructive that all other states that have adopted similar programs have included substantive requirements. Although other states certainly are not bound by constitutional obligations identical to ours, examining their similar programs and the substantive standards imposed on participating schools exposes the woeful lack of oversight in the Opportunity Scholarship Program here. For example, compared with ten similar programs across the country, North Carolina's program falls painfully short. As opposed to other jurisdictions' legislative requirements for participating private schools in the categories of state approval or accreditation, state-required curriculum, required teacher qualifications, required participation in a state testing program, and required number of instructional days or hours, the Opportunity Scholarship Program fails to incorporate any of those mandates. In comparison, six of the ten other jurisdictions have requirements in all those areas; nine out of ten have requirements in at least four of the five areas; and all ten have requirements in at least one of these areas.[13] For example, in Indiana (which has the largest state wide voucher program in the country), participating schools must be accredited, Ind. Code. § 20-51-1-6(a)(3) (2010); Ind. Code. Ann. § 20-51-1-4.7(4) (West 2013), and must teach subjects prescribed by the State, Ind. Code. Ann. § 20-51-4-1(f)(9) (West 2011). These schools must participate in state wide testing. *Id.* § 20-51-1-4.7(5) (West 2013). In Louisiana participating schools must be approved by a state board, and approval is contingent on a showing that the quality of the curriculum is at least as high as that mandated for similarly situated public schools. La. Stat. Ann. § 17:11 (2001); *id.* § 17:4021(A) (West Supp. 2012). Even in Arizona, the least regulated jurisdiction behind North Carolina identified by amici, participating schools must educate students in reading, grammar, math, social studies, and science. Ariz. Rev. Stat. Ann. § 15-2402(B)(1) (West Supp. 2011). As summarized above, North Carolina's Opportunity Scholarship Program lacks any kind of substantive oversight, curriculum standards, or instructional requirements. Schools receiving public

13. According to the brief filed by amici curiae Education Scholars, the other jurisdictions include Arizona, Cleveland, the District of Columbia, Indiana, Louisiana, Maine, Milwaukee, Ohio, Vermont, and Wisconsin.

funding through the program are essentially free to employ whomever they desire to teach whatever they desire. This is a perfectly acceptable scheme for truly private schools, but it fails utterly to satisfy the constitutionally mandated educational standards required when public funds are spent on education.

This failure brings me to the second constitutional flaw in the Opportunity Scholarship Program: the breach of the State's duty to guard and maintain the right to the privilege of education as set forth in Article I, Section 15, which is part of our constitution's Declaration of Rights. Notwithstanding this constitutional provision's clear statement that the people of our State have "a right to . . . education" and that it is the State's duty "to guard and maintain that right," N.C. Const. art. I, § 15, the majority indicates that this constitutional provision merely states a "general proposition concerning the right to the privilege of education"; that this provision is merely aspirational, rather than substantive, in nature; and that plaintiffs' reliance on it as an independent source of relief is misplaced. The majority has not, however, cited any decision from this Court in support of this proposition, and I believe the majority's assertion is inconsistent with this Court's constitutional jurisprudence.

In *Leandro* this Court concluded that Article I, Section 15 and Article IX, Section 2 of the North Carolina Constitution worked together in combination to "guarantee every child of this state an opportunity to receive a sound basic education in our public schools." 346 N.C. at 347, 488 S.E.2d at 255. In other words, this Court gave Article I, Section 15, considered in conjunction with other constitutional provisions, substantive effect. As such, the plain language of Article I, Section 15 and this Court's decision in *Leandro* regarding the interplay between Article I, Section 15 and Article IX, Section 2 makes me unable to accept the majority's statements regarding the substantive import of this constitutional provision. *See* John V. Orth & Paul Martin Newby, *The North Carolina State Constitution* 62-63 (2d ed. 2013) (citing *Leandro* as an example in which, along with other constitutional provisions, Article I, Section 15 was given substantive effect by this Court and stating that "[i]n addition to the substantive component, this section may also secure other rights, the violation of which could subject a local school board to suit without the benefit of governmental immunity or insurance coverage").

Turning to the application of Article I, Section 15 to the instant matter, this voucher program, as explained above, allows for taxpayer funds to be spent on private schooling with no required standard to ensure that teachers are competent or that students are learning at all. I must conclude that by creating this program, the State's legislature has

completely abrogated the duty to "guard and maintain [the] right" to an education. N.C. Const. art I, § 15. As the trial court concluded, "[t]he General Assembly fails the children of North Carolina when they are sent with taxpayer money to private schools that have no legal obligation to teach them anything." This failure violates the duty set forth in Article I, Section 15.

This Court's duty to the people of our State, as expressed in several clauses of our constitution, is to ensure that if taxpayer money is spent on private education, the expenditure is for an education that can prepare our children to participate and thrive in our state's society. When the General Assembly fails to ensure that these constitutional requirements are satisfied, this Court must exercise its responsibility to do otherwise. Because the majority fails to do so, I respectfully dissent.

Justices BEASLEY and ERVIN join in this dissenting opinion.

Justice BEASLEY dissenting.

I join fully Justice Hudson's dissent. I write separately to explain my additional concerns with the Opportunity Scholarship Program as currently enacted. I also write to urge caution and to reiterate the State's duties under the North Carolina Constitution "to guarantee every child of this state an opportunity to receive a sound basic education in our public schools," *Leandro v. State*, 346 N.C. 336, 347, 488 S.E.2d 249, 255 (1997), and to "*afford*[ ] *school facilities of recognized and ever-increasing merit to all the children of the State . . . to the full extent that our means could afford and intelligent direction accomplish*," *id.* at 346, 488 S.E.2d at 254 (emphasis added) (quoting *Bd. of Educ. v. Bd. of Cty. Comm'rs*, 174 N.C. 469, 472, 93 S.E. 1001, 1002 (1917)).

The Supreme Court of the United States made the following prescient observation regarding education more than sixty years ago. These words remain equally valid now.

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening

> the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Brown v. Bd. of Educ., 347 U.S. 483, 493, 74 S. Ct. 686, 691, 98 L. Ed. 873, 880 (1954), *additional proceedings at* 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (1955). Central to the Court's decision was the understanding that "[w]e must consider public education in the light of its full development and its present place in American life." *Brown*, 347 U.S. at 492, 74 S. Ct. at 691, 98 L. Ed. 2d at 880.

Free public education historically has been, and today remains, vital to American life. Its diminishment in quality or its concentration among a few invites despots to power and risks oppressing the rest. With continued necessity for preserving and promoting free public education clearly in view, I turn to the Opportunity Scholarship Program.

The Court correctly explains that our circumspect inquiry is constrained to the facial challenge presented in view of established principles of constitutional interpretation. Nonetheless, the majority's opinion should not be read so broadly as to set an impossible standard for a facial challenge to legislation, particularly when the legislation stands to affect the education of the children of North Carolina. *Beaufort Cty. Bd. of Educ. v. Beaufort Cty. Bd. of Comm'rs*, 363 N.C. 500, 502, 681 S.E.2d 278, 280-81 (2009) ("This Court will only measure the balance struck in the statute against the minimum standards required by the constitution."). It is well established that, subject to the constitution, it is for the General Assembly to "establish minimum educational requirements and standards." *Delconte v. State*, 313 N.C. 384, 402, 329 S.E.2d 636, 647 (1985); see id. at 401-02, 329 S.E.2d at 647 ("We also recognize that the state has a compelling interest in seeing that children are educated and may, constitutionally, establish minimum educational requirements and standards for this education." (citations omitted)). But those standards must comport with the constitutional minimum, and it has long been beyond dispute that this Court has jurisdiction to determine whether legislation meets the minimum allowed by our Constitution. *E.g.*, *Bayard v. Singleton*, 1 N.C. 5 (1787).

This Court already has articulated "the minimum standards required by the constitution," *Beaufort Bd. of Educ.*, 363 N.C. at 502, 681 S.E.2d

at 281, when the General Assembly purports to provide for public education. In *Leandro* we "address[ed] plaintiff-parties' constitutional challenge to the state's public education system." 346 N.C. at 345, 488 S.E.2d at 254. We explained that the North Carolina Constitution guarantees every child the right to a sound basic education, and we defined the mandate for public education by explaining that

> [f]or purposes of our Constitution, a "sound basic education" is one that will provide the student with at least: (1) sufficient ability to read, write, and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society; (2) sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state, and nation; (3) sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training; and (4) sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.

Id. at 347, 488 S.E.2d at 255 (citations omitted).

Although *Leandro* concerned public schools, this Court has established that the particular type of building in which the education occurs is immaterial. *See Delconte*, 313 N.C. 384, 329 S.E.2d 636 (allowing home schools). It is the opportunity for a constitutionally permissible minimum quality of education that is essential. If the General Assembly appropriates public funds[14] for public education, whether that education occurs in public schools or nonpublic schools receiving public funds, the General Assembly is limited to doing so only for the constitutionally permissible public purpose of providing a "sound basic education."

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14. The General Assembly is conspicuously careful to avoid acknowledging that the grants at issue are public funds. *See, e.g.*, N.C.G.S. § 115C-555 (2013) ("For the purposes of this Article, scholarship grant funds awarded pursuant to Part 2A of this Article to eligible students attending a nonpublic school *shall not be considered funding from the State of North Carolina.*") (emphasis added); *id.* § 115C-562.1(6) (2013) (defining "Scholarship grants" as "Grants awarded annually by the Authority to eligible students"). The majority correctly notes that the program is funded through appropriations from the general revenue of the Board of Governors of The University of North Carolina.

When *public funds* are used for *nonpublic initiatives* to fulfill the constitutional public education mandate, the appropriation may violate the public purpose clause, especially if the grant recipients are chosen because the public school system fails to meet their educational needs.

In denying relief for plaintiffs under North Carolina Constitution Article IX, Sections 2(1), 5, and 6, the majority posits that these sections constitutionally protect funds designated for education but do not limit the General Assembly's designation of other public funds for additional nonpublic education initiatives. In setting education policy, the danger posed by the General Assembly in designating general funds for nonpublic education and a non-public purpose is that it effectively undermines the support the legislature is constitutionally obligated to provide to the public school system. Because the Opportunity Scholarship Program circumvents the mission of public schools to successfully offer a sound basic education to all students, the General Assembly has failed to meet the mandated minimum standard.

Given North Carolina's history of public education and the State's continued efforts to address shortcomings to deliver on its constitutional mandate, the General Assembly's decision to pursue vouchers at this time and in this way is vexing.[15] The majority notes that the purpose of the grants is to address grade level deficiencies of a "large percentage of economically disadvantaged students," but as shown below, it is unclear whether or how this program truly addresses those children's needs. While every member of this Court fully recognizes the legislature's responsibility to implement education policy and its right to pursue novel approaches, *Redev. Comm'n v. Sec. Nat'l Bank of Greensboro*, 252 N.C. 595, 612, 114 S.E.2d 688, 700 (1960), this Court should not permit the State to lessen its obligation to the children of North Carolina.

In endeavoring to provide its citizens with a sound basic education, North Carolina has long embraced a complex variety of educational initiatives, including public schools, secular and sectarian private schools, and home schools. *See generally* M.C.S. Noble, *A History of the Public Schools of North Carolina* (1930) (discussing the history of public education in North Carolina, including the development of curricula,

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15. There may be instances when the use of public funds for nonpublic schools can serve a public purpose. While public schools are supposed to accommodate all students' educational needs, some circumstances exist in which the public purpose may be best met by funding a nonpublic educational situation, such as the education of children with disabilities under North Carolina General Statutes Chapter 115C, Subchapter IV, Article 9. This issue, however, is not before our Court at this time.

religious instruction in public schools, teachers' qualifications, and segregated schools); *see also Delconte*, 313 N.C. at 397-400, 329 S.E.2d at 645-46 (summarizing the development of public education legislation). Our legislature has met the standard with varying degrees of success. It is worth observing that our General Assembly previously embraced vouchers for approximately a decade as a means to avoid the State's obligation under the U.S. Constitution to desegregate public schools as required by the Supreme Court of the United States in its seminal *Brown v. Board* decisions. *See* Milton Ready, *The Tar Heel State: A History of North Carolina* 349 (2005) (describing the "Pearsall Plan" as "a stubbornly conservative strategy that eventually satisfied no one"); *id.* at 355-56 (explaining that beginning in the 1960s and 1970s, "[s]ophisticated racial and segregationist appeals . . . . took on a more abstract form" and "[m]any of the newer strategies came wrapped in terms as local control, vouchers, charter schools, tax cuts, distributive welfare, and limited government interference in the private affairs of ordinary citizens"); *see also Hawkins v. N.C. State Bd. of Educ.*, No. 2067, 11 Race Rel. L. Rep. 745 (W.D.N.C. Mar. 31, 1966) (declaring the Pearsall Plan facially unconstitutional). Indeed, some of our schools are only now achieving unitary status under long-standing federal orders to desegregate. *E.g.*, *Everett v. Pitt Cty. Bd. of Educ.*, 788 F.3d 132 (4th Cir. 2015). Even those victories, however, are tempered by a different reality:

> The rapid rate of de facto resegregation in our public school system in recent decades is well-documented. As one scholar put it, "Schools are more segregated today than they have been for decades, and segregation is rapidly increasing." Erwin Chemerinsky, *Separate and Unequal: American Public Education Today*, 52 Am. U. L. Rev. 1461, 1461 (2003) (footnote omitted); *see also* Lia B. Epperson, *Resisting Retreat: The Struggle for Equity in Educational Opportunity in the Post–Brown Era*, 66 U. Pitt. L. Rev. 131, 145 (2004) ("American public schools have been steadily resegregating for more than a decade, dismantling the integrative successes of hundreds of districts that experienced significant levels of integration in the wake of *Brown* and its progeny. Such racial isolation in public schools is worse today than at any time in the last thirty years.").

Id. at 150-51 (Wynn, J., dissenting).

For now, as noted by the majority, the program is available only to lower-income families. This availability assumes that private schools are

available within a feasible distance, that these families win the grant lottery, and that their children gain admission to the nonpublic school of their choice. With additional costs for transportation, tuition, books, and, at times, school uniforms, for the poorest of these families, the "opportunity" advertised in the Opportunity Scholarship Program is merely a "cruel illusion." *Tenn. Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 154-55 (Tenn. 1993) ("[E]ducational opportunity of the children in this state should not be controlled by the fortuitous circumstance of residence . . . . Such a system only promotes greater opportunities for the advantaged while diminishing the opportunities for the disadvantaged. . . . 'The notion of local control was a "cruel illusion" for the poor districts due to limitations placed upon them by the system itself. . . .' ") (first and second ellipses in original) (quoting *Dupree v. Alma Sch. Dist. No. 30*, 279 Ark. 340, 346, 651 S.W.2d 90, 93 (1983)) (third ellipsis in original))).

Without systemic and cultural adjustments to address social inequalities, the further cruel illusion of the Opportunity Scholarship Program is that it stands to exacerbate, rather than alleviate, educational, class, and racial divides. *See generally* Julian E. Zelizer, *How Education Policy Went Astray*, The Atlantic (Apr. 10, 2015), http://www.theatlantic.com/education/archive/2015/04/how-education-policy-went-astray/390210/ (last visited July 16, 2015) (discussing changes in American education policy over the past fifty years and the relationship between continually failing education policy and economic inequality). *See also* Br. for N.C. Conference of the NAACP as Amicus Curiae Supporting Plaintiff-Appellees at 3-9, *Hart v. State*, ___ N.C. ___, ___ S.E.2d ___ (2015) (No. 372A14) (discussing discriminatory "creaming" and "cropping" practices by which private schools admit "the best and least costly students" or "deny[ ] services and enrollment to diverse learners" (citations omitted)). In time, public schools may be left only with the students that private schools refuse to admit based on perceived lack of aptitude, behavioral concerns, economic status, religious affiliation, sexual orientation, or physical or other challenges, or public schools may become grossly disproportionately populated by minority children. The policy promoted by the Opportunity Scholarship Program, therefore, may serve to widen already considerable gaps and create a larger class of underserved children.

REVEREND ROBERT RICHARDSON, III, REVEREND MICHAEL AND DELORES GALLOWAY, STEVEN W. SIZEMORE, THE NORTH CAROLINA SCHOOL BOARDS ASSOCIATION, ALAMANCE-BURLINGTON BOARD OF EDUCATION, ASHEBORO CITY BOARD OF EDUCATION, CATAWBA COUNTY BOARD OF EDUCATION, CHAPEL HILL-CARRBORO CITY BOARD OF EDUCATION, CHATHAM COUNTY BOARD OF EDUCATION, CLEVELAND COUNTY BOARD OF EDUCATION, COLUMBUS COUNTY BOARD OF EDUCATION, CRAVEN COUNTY BOARD OF EDUCATION, CURRITUCK COUNTY BOARD OF EDUCATION, DAVIDSON COUNTY BOARD OF EDUCATION, DURHAM PUBLIC SCHOOLS BOARD OF EDUCATION, EDENTON-CHOWAN BOARD OF EDUCATION, GATES COUNTY BOARD OF EDUCATION, GRAHAM COUNTY BOARD OF EDUCATION, HALIFAX COUNTY BOARD OF EDUCATION, HARNETT COUNTY BOARD OF EDUCATION, HYDE COUNTY BOARD OF EDUCATION, LEE COUNTY BOARD OF EDUCATION, LENOIR COUNTY BOARD OF EDUCATION, LEXINGTON CITY BOARD OF EDUCATION, MACON COUNTY BOARD OF EDUCATION, MARTIN COUNTY BOARD OF EDUCATION, MOUNT AIRY CITY BOARD OF EDUCATION, NEWTON-CONOVER CITY BOARD OF EDUCATION, ONSLOW COUNTY BOARD OF EDUCATION, ORANGE COUNTY BOARD OF EDUCATION, PAMLICO COUNTY BOARD OF EDUCATION, PERSON COUNTY BOARD OF EDUCATION, PITT COUNTY BOARD OF EDUCATION, POLK COUNTY BOARD OF EDUCATION, ROCKINGHAM COUNTY BOARD OF EDUCATION, RUTHERFORD COUNTY BOARD OF EDUCATION, SCOTLAND COUNTY BOARD OF EDUCATION, STANLEY COUNTY BOARD OF EDUCATION, SURRY COUNTY BOARD OF EDUCATION, VANCE COUNTY BOARD OF EDUCATION, WARREN COUNTY BOARD OF EDUCATION, WASHINGTON COUNTY BOARD OF EDUCATION, WHITEVILLE CITY BOARD OF EDUCATION, YANCEY COUNTY BOARD OF EDUCATION, ALEXANDER COUNTY BOARD OF EDUCATION, ASHEVILLE CITY BOARD OF EDUCATION, AVERY COUNTY BOARD OF EDUCATION, BERTIE COUNTY BOARD OF EDUCATION, BLADEN COUNTY BOARD OF EDUCATION, CAMDEN COUNTY BOARD OF EDUCATION, CASWELL COUNTY BOARD OF EDUCATION, CHEROKEE COUNTY BOARD OF EDUCATION, CLINTON CITY BOARD OF EDUCATION, CUMBERLAND COUNTY BOARD OF EDUCATION, EDGECOMBE COUNTY BOARD OF EDUCATION, ELIZABETH CITY-PASQUOTANK BOARD OF EDUCATION, FRANKLIN COUNTY BOARD OF EDUCATION, GRANVILLE COUNTY BOARD OF EDUCATION, GUILFORD COUNTY BOARD OF EDUCATION, HAYWOOD COUNTY BOARD OF EDUCATION, HERTFORD COUNTY BOARD OF EDUCATION, HICKORY CITY BOARD OF EDUCATION, HOKE COUNTY BOARD OF EDUCATION, JACKSON COUNTY BOARD OF EDUCATION, JONES COUNTY BOARD OF EDUCATION, KANNAPOLIS CITY BOARD OF EDUCATION, MONTGOMERY COUNTY BOARD OF EDUCATION, MOORE COUNTY BOARD OF EDUCATION, MOORESVILLE GRADED SCHOOL DISTRICT BOARD OF EDUCATION, NASH-ROCKY MOUNT BOARD OF EDUCATION, NORTHAMPTON COUNTY BOARD OF EDUCATION, BOARD OF TRUSTEES FOR ROANOKE RAPIDS GRADED SCHOOL DISTRICT, SAMPSON COUNTY BOARD OF EDUCATION, THOMASVILLE CITY BOARD OF EDUCATION, AND TRANSYLVANIA COUNTY BOARD OF EDUCATION, PLAINTIFFS

v.

STATE OF NORTH CAROLINA, NORTH CAROLINA STATE BOARD OF EDUCATION, AND NORTH CAROLINA STATE EDUCATION ASSISTANCE AUTHORITY, DEFENDANTS,

and

CYNTHIA PERRY, GENNELL CURRY, TIM MOORE, AND PHIL BERGER, INTERVENOR-DEFENDANTS

RICHARDSON v. STATE

[368 N.C. 158 (2015)]

No. 384A14

Filed 23 July 2015

Appeal pursuant to N.C.G.S. § 7A-27(b)(1) from an order and final judgment granting summary judgment and injunctive relief for plaintiffs entered on 28 August 2014 by Judge Robert H. Hobgood in Superior Court, Wake County. On 14 October 2014, pursuant to N.C.G.S. § 7A-31(a) and (b)(2), and Rule 15(e)(2) of the North Carolina Rules of Appellate Procedure, the Supreme Court on its own initiative certified the case for review prior to determination in the Court of Appeals. Heard in the Supreme Court on 24 February 2015.

Poyner Spruill LLP, by Edwin M. Speas, Jr. and Carrie V. McMillan; and Tharrington Smith, LLP, by Deborah R. Stagner and Kenneth A. Soo, for individual and school board plaintiff-appellees;[1] *and Robert F. Orr for plaintiff-appellee North Carolina School Boards Association.*

Roy Cooper, Attorney General, by Lauren M. Clemmons, Special Deputy Attorney General, for defendant-appellants.

Institute for Justice, by Richard D. Komer, pro hac vice, Robert Gall, and Renée Flaherty, pro hac vice; and Shanahan Law Group, PLLC, by John E. Branch, III, for parent intervenor-defendant-appellants Cynthia Perry and Gennell Curry.

Nelson Mullins Riley & Scarborough, LLP, by Noah H. Huffstetler III and Stephen D. Martin, for legislative officer intervenor-defendant-appellants Tim Moore and Phil Berger.

Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., by Daniel F.E. Smith, Jill R. Wilson, and Robert J. King III; and AdvancED, by Kenneth Bergman, for Advance Education, Inc., amicus curiae.

American Civil Liberties Union of North Carolina Legal Foundation, by Christopher Brook, for Americans United for Separation of Church and State, American Civil Liberties Union, American Civil Liberties Union of North Carolina Legal

1. Attorneys Speas and McMillan are counsel for all plaintiff-appellees except Chatham County Board of Education, Nash-Rocky Mount Board of Education, Board of Trustees for Roanoke Rapids Graded School District, and Granville County Board of Education. Attorneys Stagner and Soo represent these four entities.

Foundation, Anti-Defamation League, Baptist Joint Committee for Religious Liberty, and Interfaith Alliance Foundation, amici curiae.

Williamson, Dean, Williamson & Sojka, L.L.P., by Nickolas J. Sojka, Jr.; and Michael A. Rebell, pro hac vice, for Campaign for Educational Equity, Teachers College, Columbia University, amicus curiae.

Liberty, Life, and Law Foundation, by Deborah J. Dewart; Thomas C. Berg, pro hac vice, University of St. Thomas School of Law (Minnesota); and Christian Legal Society, by Kimberlee Wood Colby, pro hac vice, for Christian Legal Society; North Carolina Christian School Association; Roman Catholic Diocese of Charlotte, North Carolina; Roman Catholic Diocese of Raleigh, North Carolina; North Carolina Family Policy Council; Liberty, Life, and Law Foundation; Association of Christian Schools International; American Association of Christian Schools; and National Association of Evangelicals, amici curiae.

Campbell Shatley, PLLC, by Chad R. Donnahoo; and National School Boards Association, by Francisco M. Negrón, Jr., pro hac vice, for National School Boards Association, amicus curiae.

Robinson, Bradshaw & Hinson, P.A., by Richard A. Vinroot and Matthew F. Tilley, for Pacific Legal Foundation, amicus curiae.

PER CURIAM.

For the reasons stated in *Hart v. State*, ___ N.C. ___, ___, ___ S.E.2d ___, ___ (2015) (372A14), the decision of the trial court is reversed.

REVERSED.

Justice HUDSON, Justice BEASLEY, and Justice ERVIN dissent for the reasons stated in Justice Hudson's dissenting opinion in *Hart v. State*, ___ N.C. ___, ___, ___ S.E.2d ___, ___ (2015) (372A14). Justice BEASLEY also dissents for the reasons stated in her dissenting opinion in *Hart v. State*, *id.* at ___, ___ S.E.2d at ___.

STATE OF NORTH CAROLINA
v.
WALTER ERIC MCKINNEY

No. 47PA14

Filed 21 August 2015

Search and Seizure—search warrant—probable cause—totality of circumstances

The trial court did not err by denying defendant's motion to suppress evidence of contraband found in his home pursuant to a search warrant. Based on the totality of the circumstances, the magistrate had a substantial basis for concluding that probable cause existed to justify the warrant. The affidavit attached to the search warrant application described the citizen complaint about suspected drug activity that led to the officers' surveillance, the arrest of a man who spent six minutes in defendant's home and was found to have a substantial amount of cash and remnants of marijuana in his vehicle, and the text messages regarding a drug sale on the man's cell phone.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, ___ N.C. App. ___, 752 S.E.2d 726 (2014), reversing a judgment entered on 8 October 2012 by Judge Patrice A. Hinnant and an order entered on 11 October 2012 by Judge William Z. Wood, Jr., both in Superior Court, Guilford County. Heard in the Supreme Court on 16 March 2015.

Roy Cooper, *Attorney General*, *by Derrick C. Mertz*, *Assistant Attorney General*, *for the State-appellant.*

Staples S. Hughes, *Appellate Defender*, *by Jon H. Hunt*, *Assistant Appellate Defender*, *for defendant-appellee.*

EDMUNDS, Justice.

An investigation that began with an anonymous complaint to police led to a search of defendant's home, where contraband was found. After the trial court denied defendant's motion to suppress the evidence found during the search, he pleaded guilty to several drug-related offenses. We conclude that the totality of circumstances demonstrates that the magistrate had a substantial basis for concluding that probable cause existed to justify issuing a warrant authorizing the search of defendant's

home. Accordingly, we reverse the holding of the Court of Appeals to the contrary.

On 22 April 2012, a citizen met with Officer Christopher Bradshaw of the Greensboro Police Department and reported observing heavy traffic in and out of Apartment C at 302 Edwards Road. Pointing out that the visitors made abbreviated stays at the apartment, the citizen also reported having seen the resident of that apartment dealing in narcotics in the parking lot of the apartment complex. The citizen added that he or she believed that behavior was related to narcotics.

In response to this report, Officer Bradshaw and others in his unit immediately began surveillance of the named apartment and saw a red Pontiac arrive there at 12:41 p.m. The driver of the vehicle entered the apartment, emerged six minutes later, and drove away. One of the officers promptly stopped the Pontiac for a traffic violation, and the driver, Roy Foushee, was found to have $4,258.00 in cash on his person. A gallon-size plastic bag that contained marijuana remnants was recovered from the interior of the vehicle.

The officers arrested Foushee, and, incident to the arrest, searched his cell telephone. A series of text messages exchanged minutes before Foushee was seen entering the Edwards Road apartment caught the officers' attention. The first, timed at 12:12 p.m., was sent to Foushee from "Chad" and said, "Bra, when you come out to get the money, can you bring a fat 25. I got the bread." The next, also from "Chad," asked, "Can you bring me one more, Bra?" Foushee replied, "About 45," and "Chad" responded, "ight."

Inferring that Foushee had just completed a delivery of drugs for cash, Officer Bradshaw applied for a search warrant for the Edwards Road apartment. The attached affidavit described the nature of the citizen complaint that triggered the investigation, the results of the officers' surveillance, the arrest of Foushee, the material found on Foushee's person and in his car, and the text messages recovered from Foushee's telephone. The warrant was issued and executed that same day. After discovering controlled substances, drug paraphernalia, and a firearm and ammunition in the apartment, the officers arrested defendant, who lived there and was present during the search. The name "Chad" was never linked to anyone identified in the investigation.

On 2 July 2012, defendant was indicted by a Guilford County grand jury for trafficking in cocaine by possession, possession of cocaine, possession of marijuana with intent to sell or deliver, possession of marijuana, and maintaining a dwelling used for selling controlled substances,

all in violation of the North Carolina Controlled Substances Act. He also was indicted for possession of a firearm by a felon, in violation of N.C.G.S. § 14-415.1. On 7 September 2012, defendant filed a motion to suppress the evidence seized from his residence pursuant to the search warrant, arguing that the warrant was not supported by probable cause. At the conclusion of an evidentiary hearing held on 11 September 2012, the trial court orally denied the motion. On 11 October 2012, the trial court filed a written order finding that under the totality of circumstances, "a sufficient basis for probable cause in the supporting attachment to the search warrant for the defendant's residence" existed.

On 1 October 2012, defendant entered a negotiated agreement in which he pleaded guilty to possession of a firearm by a felon, possession of marijuana with intent to sell or deliver, possession of cocaine with intent to sell or deliver, and maintaining a dwelling place to keep or sell controlled substances. In the agreement, defendant reserved his right to appeal the trial court's denial of his motion to suppress. The trial court imposed an active sentence of eleven to twenty-three months of imprisonment.

Defendant appealed to the Court of Appeals, arguing that the trial court erred in denying his motion to suppress the evidence seized from his residence. That court found that the information provided in Officer Bradshaw's affidavit was "insufficient to establish probable cause to search defendant's apartment," *State v. McKinney*, ___ N.C. App. ___, ___, 752 S.E.2d 726, 730 (2014), because it "implicates [defendant's] premises *solely as a conclusion of the affiant*," *id.* at ___, 752 S.E.2d at 730 (alteration in original) (quoting *State v. Campbell*, 282 N.C. 125, 131, 191 S.E.2d 752, 757 (1972)). The court concluded that "[t]he inference the State seeks to draw from the contents of this affidavit—that narcotic drugs are illegally possessed on the described premises—does not reasonably arise from the facts alleged." *Id.* at ___, 752 S.E.2d at 730 (alteration in original) (quoting *Campbell*, 282 N.C. at 131, 191 S.E.2d at 757). Concluding that no "reasonable nexus" existed between Foushee's vehicle in which marijuana was found and defendant's residence, *id.* at ___, 752 S.E.2d at 730, the Court of Appeals held that the search warrant was unsupported by probable cause and reversed the trial court's denial of defendant's motion to suppress, *id.* at ___, 752 S.E.2d at 731.

In reviewing a trial court's ruling on a motion to suppress, we consider "whether the trial judge's underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge's ultimate conclusions of law." *State v. Cooke*, 306 N.C. 132, 134, 291

S.E.2d 618, 619 (1982). We review an opinion of the Court of Appeals for error of law. N.C. R. App. P. 16(a); *State v. Brooks*, 337 N.C. 132, 149, 446 S.E.2d 579, 590 (1994).

Defendant argues that his Fourth Amendment rights were violated when his apartment was searched pursuant to a warrant that he claims was issued without probable cause. The Fourth Amendment protects citizens from "unreasonable searches and seizures" and permits warrants to be issued only upon a showing of probable cause. U.S. Const. amend. IV. A "neutral and detached magistrate" determines whether probable cause exists. *Johnson v. United States*, 333 U.S. 10, 14, 68 S. Ct. 367, 369, 92 L. Ed. 436, 440 (1948); *see also Campbell*, 282 N.C. at 131, 191 S.E.2d at 756. Courts interpreting the Fourth Amendment have expressed a "strong preference for searches conducted pursuant to a warrant." *Illinois v. Gates*, 462 U.S. 213, 236, 103 S. Ct. 2317, 2331, 76 L. Ed. 2d 527, 547 (1983); *State v. Sinapi*, 359 N.C. 394, 398, 610 S.E.2d 362, 365 (2005) (quoting *State v. Riggs*, 328 N.C. 213, 222, 400 S.E.2d 429, 434 (1991)). "A grudging or negative attitude by reviewing courts toward warrants" is inconsistent with that preference. *United States v. Ventresca*, 380 U.S. 102, 106-08, 85 S. Ct. 741, 745, 13 L. Ed. 2d 684, 689 (1965). Recognizing that affidavits attached to search warrants "are normally drafted by nonlawyers in the . . . haste of a criminal investigation," *id.* at 108, 85 S. Ct at 746, 13 L. Ed. 2d at 689, courts are reluctant to scrutinize them "in a hypertechnical, rather than a commonsense, manner," *id.* at 109, 85 S. Ct. at 746, 13 L. Ed. 2d at 689.

Under North Carolina law, an application for a search warrant must be supported by an affidavit detailing "the facts and circumstances establishing probable cause to believe that the items are in the places . . . to be searched." N.C.G.S. § 15A-244(3) (2013). A magistrate must "make a practical, common-sense decision," based on the totality of the circumstances, whether there is a "fair probability" that contraband will be found in the place to be searched. *Gates*, 462 U.S. at 238, 103 S. Ct. at 2332, 76 L. Ed. 2d at 548; *e.g.*, *State v. Benters*, 367 N.C. 660, 664, 766 S.E.2d 593, 598 (2014). This standard for determining probable cause is flexible, *State v. Zuniga*, 312 N.C. 251, 262, 322 S.E.2d 140, 146 (1984), permitting the magistrate to draw "reasonable inferences" from the evidence in the affidavit supporting the application for the warrant, *see Riggs*, 328 N.C. at 221, 400 S.E.2d at 434 (quoting *Gates*, 462 U.S. at 240, 103 S. Ct. at 2333, 76 L. Ed. 2d at 549), and from supporting testimony, as set out in N.C.G.S. § 15A-245(a). That evidence is viewed from the perspective of a police officer with the affiant's training and experience, *Benters*, 367 N.C. at 672, 766 S.E.2d at 603 (citing *Ornelas v. United*

States, 517 U.S. 690, 699, 116 S. Ct. 1657, 1663, 134 L. Ed. 2d 911, 920-21 (1996)), and the commonsense judgments reached by officers in light of that training and specialized experience, *see United States v. Ortiz*, 422 U.S. 891, 897, 95 S. Ct. 2585, 2589, 45 L. Ed. 2d 623, 629 (1975).

Probable cause requires not certainty, but only "*a probability or substantial chance* of criminal activity." *Riggs*, 328 N.C. at 219, 400 S.E.2d at 433 (quoting *Gates*, 462 U.S. at 244 n.13, 103 S. Ct. at 2335 n.13, 76 L. Ed. 2d at 552 n.13 (emphasis added)). The magistrate's determination of probable cause is given "great deference" and "after-the-fact scrutiny should not take the form of a *de novo* review." *State v. Arrington*, 311 N.C. 633, 638, 319 S.E.2d 254, 258 (1984) (citing *Gates*, 462 U.S. at 236, 103 S. Ct. at 2331, 76 L. Ed. 2d at 547). Instead, a reviewing court is responsible for ensuring that the issuing magistrate had a " 'substantial basis for . . . conclud[ing]' that probable cause existed." *Gates*, 462 U.S. at 238-39, 103 S. Ct. at 2332, 76 L. Ed. 2d at 548 (alterations in original) (quoting *Jones v. United States*, 362 U.S. 257, 271, 80 S. Ct. 725, 736, 4 L. Ed. 2d 697, 708 (1960), *overruled on other grounds by United States v. Salvucci*, 448 U.S. 83, 100 S. Ct. 2547, 65 L. Ed. 2d 619 (1980)).

Defendant makes several arguments contending that the warrant was invalid. He maintains that the citizen complaint underlying the officer's application for the search warrant was unreliable because the complaint gave no indication when the citizen observed either the short stays or drugs purportedly changing hands, that the complaint was only a "naked assertion" that the observed activities were narcotics-related, and that the State failed to establish a nexus between Foushee's vehicle and defendant's apartment. None of these arguments are persuasive, either individually or collectively.

As for the amount of detail in the citizen's complaint, "an officer 'may rely upon information received through an informant, rather than upon his direct observations, so long as the informant's statement is reasonably corroborated by other matters within the officer's knowledge.' " *State v. Bone*, 354 N.C. 1, 10, 550 S.E.2d 482, 488 (2001) (quoting *Jones*, 362 U.S. at 269, 80 S. Ct. at 735, 4 L. Ed. 2d at 707). Moreover, such a citizen complaint is not necessarily reviewed in isolation. In addition to the information detailed above that the citizen gave Officer Bradshaw, the affidavit stated that officers thereafter conducted surveillance of the identified apartment, observed Foushee make a six-minute visit, and found both marijuana remnants in an otherwise empty bag and a substantial cash sum during a subsequent investigatory stop. The officer's direct observations were thus consistent with the citizen's information.

As for the nexus between Foushee's vehicle and defendant's apartment, while defendant points out that the evidence gave no indication how long the marijuana could have been in Foushee's car and that Foushee's visit with defendant could just as easily have been innocent, the affidavit included relevant texts exchanged between Foushee and "Chad" minutes before Foushee arrived at defendant's apartment. The timing and substance of these texts suggested preparation for and negotiation of a drug transaction involving Foushee and someone he was about to meet. Although no "Chad" was identified when defendant's apartment was later searched, this contingency could not be foreseen when Officer Bradshaw applied for the warrant. Instead, the information available to the officer and provided to the magistrate at the time the search warrant was requested and issued sufficiently indicated that the transaction adumbrated in the texts was consummated moments later in defendant's apartment. Thus, this case is distinguishable from *Campbell*, cited both by defendant and the Court of Appeals. In *Campbell*, the affidavit asserted only that the defendants were named in arrest warrants charging narcotics offenses, were selling drugs to certain individuals, and were residing at the residence to be searched. 282 N.C. at 130, 191 S.E.2d at 756. Unlike the case at bar, the affidavit in *Campbell* included no information indicating that drugs had been possessed in or sold from the dwelling to be searched. As a result, *Campbell* does not control the outcome here.

We conclude that, under the totality of circumstances, all the evidence described in the affidavit both established a substantial nexus between the marijuana remnants recovered from Foushee's vehicle and defendant's residence, and also was sufficient to support the magistrate's finding of probable cause to search defendant's apartment. Considering this evidence in its entirety, "the magistrate could reasonably conclude that the proposed search would reveal the presence of illegal drugs in the dwelling." *Id.* at 131, 191 S.E.2d at 757. Accordingly, we reverse the holding of the Court of Appeals to the contrary.

REVERSED.

IN RE R.R.N.

[368 N.C. 167 (2015)]

IN THE MATTER OF R.R.N.

No. 186PA14

Filed 21 August 2015

Child Abuse, Dependency, and Neglect—sexual abuse by adult during sleepover—abuser not caretaker—not abused and neglected juvenile

The trial court erred by adjudicating a child an abused and neglected juvenile after she was sexually abused by an adult relative during a sleepover. The abuser's supervision of the child for one night did not render him a "caretaker" under N.C.G.S. § 7B-101(3). Factors that determine whether a person is "entrusted with a juvenile's care" include duration and frequency of care, location of care, and decision-making authority.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, ___ N.C. App. ___, 757 S.E.2d 503 (2014), reversing an order entered on 22 July 2013 by Judge Pell C. Cooper in District Court, Wilson County. Heard in the Supreme Court on 16 February 2015.

Stephen L. Beaman for petitioner-appellant Wilson County Department of Social Services.

Tawanda N. Foster, Appellate Counsel, Administrative Office of the Courts, for appellee Guardian ad Litem.

Annick Lenoir-Peek, Assistant Appellate Defender, for respondent-appellee mother.

NEWBY, Justice.

This case requires us to determine whether an adult relative who supervises a child during a sleepover is a "caretaker" of that child under section 7B-101(3) of the Juvenile Code, thus involving the State in the life of the child and her family. The Juvenile Code defines a "caretaker" in part as "an adult relative entrusted with the juvenile's care." N.C.G.S. § 7B-101(3) (2013). Though an adult relative who supervises a sleepover is temporarily responsible for ensuring the child's safety while the child is visiting, such a temporary arrangement does not mean the adult is "entrusted with"

the child's care as contemplated by the Juvenile Code. When, as here, the child's mother and stepfather responded appropriately, the abuse of the child by the adult relative does not warrant the State's intrusion into the family unit. Therefore, we affirm the decision of the Court of Appeals.

At the time of the events at issue, R.R.N. was twelve years old and lived at home with her mother (respondent), stepfather, brother, and stepbrother. R.R.N.'s mother has had full custody of her since birth. Occasionally, R.R.N.'s family visited with and attended cookouts at the home of Mr. B., who is R.R.N.'s stepfather's cousin, and Mr. B.'s family. Mr. B. and his wife have a son, and the couple also had custody of two other children in 2012. During the spring and summer of 2012, Mr. B., who was thirty-six years old at the time, engaged in sexual acts with then-twelve-year-old R.R.N. During one family get-together at Mr. B.'s house, Mr. B. kissed R.R.N. on the lips and with his tongue behind a barn. On another occasion, they "rode a four wheeler into the woods" where R.R.N. performed oral sex on Mr. B, and he fondled her breasts. A short time later, Mr. B. took R.R.N. to Walmart to buy her a birthday present. During the drive back to R.R.N.'s house, Mr. B. stopped at the side of the road, where R.R.N. again performed oral sex on him and he touched her breasts. R.R.N. believed Mr. B. was her boyfriend, and the two made plans for R.R.N. to spend the night at Mr. B.'s house on 18 August 2012 so they could have sexual intercourse. Mr. B. told R.R.N. to keep their relationship secret because otherwise, he could go to jail.

On 18 August 2012, R.R.N.'s mother allowed R.R.N. to spend the night at Mr. B.'s house with Mr. B., his wife, and the three children. That night R.R.N. fell asleep in a bed with one of the other girls. After his wife fell asleep, Mr. B. carried the other girl into another room and returned to the bedroom, where R.R.N. was alone. R.R.N. performed oral sex on Mr. B., and Mr. B. digitally penetrated R.R.N.'s vagina; however, they did not have sexual intercourse.

The next day R.R.N.'s mother picked up R.R.N. from Mr. B.'s house, and R.R.N. discovered that Mr. B. had engaged in sexual relations with a woman who was not his wife. Disappointed and hurt, R.R.N. told her mother that she was in a relationship with Mr. B., and she described the inappropriate sexual conduct between them. R.R.N.'s mother and stepfather sought counseling for R.R.N. and did not allow any further contact between R.R.N. and Mr. B. R.R.N.'s mother also reported the alleged abuse to the Wilson County Department of Social Services (DSS).

DSS filed a petition alleging R.R.N. was an abused and neglected juvenile. The petition stated that Mr. B. was R.R.N.'s "caretaker" on

18 August 2012 when R.R.N. spent a single night at his house. R.R.N.'s mother moved to dismiss DSS's petition under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure, arguing that the Juvenile Code did not apply because Mr. B. was not R.R.N.'s caretaker. The trial court disagreed. It concluded that Mr. B. was R.R.N.'s caretaker on 18 August 2012 and adjudicated R.R.N to be an abused and neglected juvenile, thereby allowing the court to assume authority over R.R.N. and her family. The court nevertheless found that it was in R.R.N.'s best interest that she remain in her mother's custody. R.R.N.'s mother appealed the adjudication of abuse and neglect.

The Court of Appeals reversed the trial court's adjudication, concluding that Mr. B. was not R.R.N.'s "caretaker." *In re R.R.N.*, ___ N.C. App. ___, ___, 757 S.E.2d 503, 506 (2014). The Court of Appeals explained that generally an adult is not a caretaker under the Juvenile Code unless the adult provides extended care. *Id.* at ___, 757 S.E.2d at 506. Therefore, because R.R.N.'s sleepover at Mr. B.'s house was temporary in nature, Mr. B. did not meet the definition of "caretaker." *Id.* at ___, 757 S.E.2d at 506. Accordingly, the Court of Appeals determined that the trial court erred in adjudicating R.R.N. abused and neglected. *Id.* at ___, 757 S.E.2d at 507. We allowed DSS's Petition for Discretionary Review.

"The Juvenile Code strikes a balance between the constitutional rights of a parent and the best interests of a child . . . ." *In re L.M.T.*, 367 N.C. 165, 167, 752 S.E.2d 453, 455 (2013) (citing N.C.G.S. § 7B-100(3) (2011)). Not every child who is a victim of serious criminal conduct is necessarily an abused and neglected juvenile under the Juvenile Code. Only when the family fails to provide proper care is DSS empowered to intervene. In furtherance of this limitation on intervention, the legislature confined the definition of "abused" or "neglected juveniles" to those children who are abused or neglected by a "parent, guardian, custodian, or caretaker." N.C.G.S. § 7B-101(1), (15) (2013). DSS contends that Mr. B. was R.R.N.'s caretaker on 18 August 2012 because (1) he was her adult relative, and (2) her parents "entrusted" him with her care by allowing her to spend one night at his home. We disagree and hold that, under the totality of the circumstances in this case, Mr. B. was not R.R.N.'s caretaker on 18 August 2012 because he was not "entrusted with [her] care" as intended by the statute.

The Juvenile Code defines "caretaker," in part, as

> [a]ny person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for

> a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, *an adult relative entrusted with the juvenile's care*, any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility, or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services.

Id. § 7B-101(3) (emphasis added).

The "caretaker" statute protects children from abuse and neglect inflicted by people with significant, parental-type responsibility for the daily care of a child in the child's residential setting. Stepparents, foster parents, and adult members of the juvenile's household, for example, live with the child in the child's home. Similarly, house parents or cottage parents are in charge of children in nontraditional residential settings, such as dormitories or group residences, where children live for extended periods of time. Therefore, in the context of the statute as a whole, "an adult relative entrusted with the juvenile's care" is a person who has a significant degree of parental-type responsibility for the child. *See*, *e.g.*, *In re A.P.*, 165 N.C. App. 841, 844, 846, 600 S.E.2d 9, 11, 13 (2004) (concluding that a step-grandfather was a caretaker after the child lived with him temporarily for eight months). The trial court must consider the totality of the circumstances in determining whether a person is "entrusted with the juvenile's care," including the duration and frequency of care provided by the adult, the location in which that care is provided, and the decision-making authority granted to the adult.

Here, under the totality of the circumstances, Mr. B. was not "entrusted with" R.R.N.'s care on 18 August 2012, when she spent one night at his house for a children's sleepover. Both Mr. and Mrs. B. were present along with three other children, and R.R.N. returned to her mother's home the next day. Mr. B. was not responsible for R.R.N. in her own home. Furthermore, as the Court of Appeals explained, "When a parent or guardian allows a child to attend a sleepover, the parent does not relinquish responsibility over the child's health and welfare." *In re R.R.N.*, ___ N.C. App. at ___, 757 S.E.2d at 506. Though Mr. B. may have been responsible for R.R.N.'s short-term safety while she visited his home for one night, R.R.N.'s mother retained the ultimate decision-making authority over her health and welfare. Therefore, because Mr. B. was not "entrusted with" R.R.N.'s care as contemplated by N.C.G.S.

§ 7B-101(3), he was not her "caretaker" on 18 August 2012 when he sexually abused her at his home.

This interpretation of the "caretaker" statute is consistent with the Juvenile Code's dual purpose of promoting the best interests of the child while still safeguarding the parent–child relationship from needless State interference. *In re L.M.T.*, 367 N.C. at 167, 752 S.E.2d at 455; *see* N.C.G.S. § 7B-100 (2013) (stating that the purposes and policies underlying the Juvenile Code include: (1) "provid[ing] procedures . . . that protect the constitutional rights of juveniles and parents"; (2) "develop[ing] a disposition . . . that reflects . . . the strengths and weaknesses of the family"; (3) "provid[ing] for services for the protection of juveniles by means that respect both the right to family autonomy and the juveniles' needs for safety, continuity, and permanence"; and (4) "provid[ing] standards . . . for ensuring that the best interests of the juvenile are of paramount consideration by the court").

We recognize that DSS has an important role in protecting children; however, because parents have a fundamental right to parent their children, *In re A.K.*, 360 N.C. 499, 457, 628 S.E.2d 753, 758 (2006), we must "acknowledge the limits within which governmental agencies may interfere with or intervene in the parent–child relationship," *In re Stumbo*, 357 N.C. 279, 286, 582 S.E.2d 255, 260 (2003). Therefore, before subjecting families to ongoing DSS supervision and an array of possible adverse collateral consequences that can flow from an adjudication of abuse or neglect, *see, e.g.*, N.C.G.S. § 7B-903(a)(2)(c) (2013) (stating a court may order that a child be placed in foster care); *id.* § 7B-904(c) (2013) (authorizing a court to order parents to undergo psychological treatment); *In re A.K.*, 360 N.C. at 458, 628 S.E.2d at 759 ("[A] stigma is likely to attach to a person who abuses or neglects his or her child."), trial courts should consider the purposes of the Juvenile Code when determining whether intervention is necessary to protect the welfare of the child. If not, DSS should not intervene. Ultimately, the best interest of the child is the lodestar, but if parents act appropriately to protect their child, their constitutional right to rear that child is paramount. *See Troxel v. Granville*, 530 U.S. 57, 68-69, 120 S. Ct. 2054, 2061, 147 L. Ed. 2d 49, 58 (2000) (plurality) ("[S]o long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.").

Here none of the purposes of the Juvenile Code are met by subjecting R.R.N.'s family to DSS supervision because of Mr. B.'s conduct on

18 August 2012. An adjudication of abuse and neglect neither promotes R.R.N.'s best interest nor protects her mother's fundamental right to parent her child. DSS's petition does not allege that R.R.N. was abused or neglected by her mother or stepfather, the two adults responsible for her care on a daily basis in her own home. To the contrary, R.R.N.'s mother and stepfather took appropriate steps to ensure R.R.N.'s safety, and the trial court released her into her mother's custody. Because R.R.N. was safe in her own home, there was no reason for DSS to assert its authority over her and her family under these circumstances.

Accordingly, under the facts of this case, we hold that Mr. B. was not "entrusted with" R.R.N.'s care as contemplated by section 7B-101(3) of the Juvenile Code. At most, Mr. B. acted as R.R.N.'s supervisor for one night on one occasion, while her mother maintained responsibility for her daughter's health and welfare at all times. Although Mr. B.'s conduct should result in criminal charges, R.R.N.'s mother and stepfather responded appropriately, and the family did not require State intervention to ensure R.R.N.'s safety. Therefore, because Mr. B. was not R.R.N.'s "caretaker" when he sexually abused her on 18 August 2012, the trial court erred in adjudicating her an abused and neglected juvenile. We affirm the decision of the Court of Appeals.

AFFIRMED.

STATE OF NORTH CAROLINA
v.
JAMES DOUGLAS TRIPLETT

No. 343PA14

Filed 21 August 2015

Evidence—potential bias of witness—relevant—weak probative value—potential to confuse jury

In defendant's trial resulting in his convictions for robbery with a dangerous weapon, second-degree burglary, and first-degree murder under the felony murder rule, the trial court did not abuse its discretion by excluding evidence of a voice message that showed a potential bias against defendant by defendant's sister who testified for the State. The trial court properly concluded that the voice message met the low bar of relevancy and then conducted a Rule 403 analysis. The sister was not a key witness for the State, and the trial

court properly balanced the weak probative value of the voice message against the possibility of confusing the jury with information about a feud within defendant's family.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, ___ N.C. App. ___, 762 S.E.2d 632 (2014), vacating a judgment entered on 18 February 2013 by Judge Edgar B. Gregory in Superior Court, Wilkes County, and ordering that defendant receive a new trial. Heard in the Supreme Court on 20 April 2015.

Roy Cooper, *Attorney General*, *by Teresa M. Postell*, *Assistant Attorney General*, *for the State-appellant.*

Staples S. Hughes, *Appellate Defender*, *by David W. Andrews*, *Assistant Appellate Defender*, *for defendant-appellee.*

HUDSON, Justice.

Here we are asked to determine if the trial court abused its discretion by excluding evidence of a threatening voice mail message left by one of defendant's sisters for a different sister. We hold that it did not.

The evidence at trial tended to show the following: On 9 December 2009, defendant was drinking and using drugs with his brother and two other co-defendants. That evening, the men went to the victim's house looking for more drugs. While they were there, a fight broke out and defendant fatally stabbed the victim. One co-defendant testified that the plan was to rob the victim of his drugs, and a cellmate of defendant's testified that defendant told him he killed the victim in the course of a robbery. At trial defendant maintained that he was unaware of any plot to steal drugs from the victim, blacked out during the ride to the victim's house, and only stabbed the victim because when he came to, he heard one of his companions yell, "He's got a gun," and saw the men fighting. Defendant claimed self-defense.

The State called defendant's sister Teresa Ogle as a witness at trial. Around the time of these events, defendant lived with Ogle in her mobile home on family land owned by a different sister. Ogle testified that on the night in question, defendant and the co-defendants arrived at home in bloody clothing and that defendant's brother, one of the co-defendants, had been stabbed in the leg. While defendant first claimed the blood and injuries were the result of a hunting accident, he soon admitted what had happened, stating that he had killed a man and that he was no better

than his grandfather, who had killed his grandmother. Ogle further testified that when she left for work later that evening, defendant gave her interlocking potholders apparently containing something and that she threw the potholders over a bridge on her way to work. Most significantly, Ogle testified that defendant told her he knew that the co-defendants had planned to rob the victim and that he took a knife from her kitchen to the victim's residence that night because he knew the victim had a gun. A large knife was missing from Ogle's kitchen.

In her testimony, Ogle also alluded to a potential rift within the family over her testimony for the State. She testified that defendant called her and urged her not to testify, and that he hung up on her when she told him she would tell the truth. On cross-examination, the defense sought to attack Ogle's credibility by questioning her about her previously diagnosed bipolar disorder and by attempting to show animus between Ogle and defendant and their family. Out of the presence of the jury, defense counsel asked to introduce a voice mail message Ogle left for another sister in the family. The defense played the message for the trial court and explained that it was left by Ogle in late 2011 after the family had evicted her from the family land and had allegedly threatened Ogle to keep her from testifying. The message included hostile statements towards the sister in response to an eviction notice taped on Ogle's door and a statement that Ogle "can call the law" or "call the D.A." Defense counsel argued that the voice mail suggested that Ogle was biased against defendant and their family. In response, the State asserted that the message was unrelated to the current charges (and much more relevant to an eviction proceeding and a charge of interfering with and intimidating a State's witness pending against the sister for whom the voice mail had been left). After some discussion, the trial court excluded the evidence under Rule 403, concluding that the probative value of the message was substantially outweighed by confusion of the issues and that defendant would be potentially prejudiced by admission of the evidence.

The jury convicted defendant of robbery with a dangerous weapon, second-degree burglary, and first-degree murder under the felony murder rule. The trial court arrested judgment on defendant's convictions for robbery with a dangerous weapon and second-degree burglary, and entered judgment on the first-degree murder conviction. Defendant was sentenced to life imprisonment without parole. Defendant appealed.

The Court of Appeals held that the trial court erred in excluding the voice mail message. *State v. Triplett*, ___ N.C. App. ___, ___, 762 S.E.2d 632, 636 (2014). After discussing the abuse of discretion standard

of review, that court held that the voice mail message was "relevant to attack Ogle's credibility and show Ogle's bias towards defendant and defendant's family." *Id.* at ___, 762 S.E.2d at 636. Noting that the trial court had "serious doubts" regarding the relevance of the evidence, the Court of Appeals concluded that "because the trial court questioned the relevance of the message, the trial court could not have properly weighed the probative value of the message against the dangers of unfair prejudice and confusion." *Id.* at ___, 762 S.E.2d at 636. Finally, the Court of Appeals held that the error was prejudicial because "Ogle was a key witness for the State" and gave essential testimony regarding defendant's knowledge of the plan to rob the victim before the group left for the victim's house. *Id.* at ___, 762 S.E.2d at 636. The Court of Appeals reasoned that "[w]ithout evidence that defendant was aware of the plan to rob [the] victim, it is likely the jury would not have found defendant guilty of robbery and burglary, the felonies underlying defendant's conviction for first degree felony murder." *Id.* at ___, 762 S.E.2d at 636. Accordingly, the Court of Appeals vacated the judgment and ordered that defendant receive a new trial. *Id.* at ___, 762 S.E.2d at 637.

We review relevancy determinations by the trial court de novo before applying an abuse of discretion standard to any subsequent balancing done by the trial court. *See State v. Beckelheimer*, 366 N.C. 127, 130, 726 S.E.2d 156, 159 (2012) (explaining that before a reviewing court applies an abuse of discretion standard in evaluating a Rule 404(b) ruling by the trial court, it must "review de novo the legal conclusion that the evidence is, or is not, within the coverage of Rule 404(b)"). We have also said that "[a] trial court's rulings on relevancy are technically not discretionary, though we accord them great deference on appeal." *State v. Lane*, 365 N.C. 7, 27, 707 S.E.2d 210, 223 (citations omitted), *cert. denied*, ___ U.S. ___, 132 S. Ct. 816, 181 L. Ed. 2d 529 (2011). In ruling on relevancy, the trial court stated: "So I make the following ruling. I rule that this tape may not be played before the jury; that I really have problems with Rule 402 and whether it's relevant." The trial court then conducted a Rule 403 balancing test. Here, as noted by the Court of Appeals, the voice mail does show potential bias by Ogle against defendant and his family. Therefore, like the Court of Appeals, we hold that the voice mail meets the low bar of relevancy under our standard.

Nonetheless, we reverse the decision of the Court of Appeals for three reasons. First, we hold that the trial court properly determined that, while barely so, the evidence was relevant, and then weighed its probative value against Rule 403 concerns. " 'Relevant evidence' means evidence having any tendency to make the existence of any fact that

is of consequence to the determination of the action more probable or less probable than it would be without the evidence." N.C.G.S. § 8C-1, Rule 401 (2013). "Evidence which is not relevant is not admissible." *Id.* Rule 402 (2013). Although the trial court's remarks are subject to different interpretations, the court did not clearly state that the voice mail was irrelevant. Instead, it appears the trial court believed the voice mail had minimal relevance, the admissibility of which the trial court then evaluated in an extensive Rule 403 balancing analysis. More importantly, because the trial court conducted the Rule 403 analysis, it necessarily found the voice mail relevant; otherwise, the court would have excluded the evidence under Rule 402, making a Rule 403 analysis unnecessary or at least, mere surplusage.

Second, despite defendant's arguments to the contrary and the statements of the Court of Appeals, Ogle was not a key witness for the State. Defendant argues (and the Court of Appeals agreed) that Ogle was the only witness to testify to defendant's prior knowledge of the robbery plan. This assertion is not accurate; while Ogle did testify to that fact, other witnesses did so as well. One of the co-defendants, Dillon Walsh, testified as follows regarding the plan:

> [The State.] And what did Ben [Watson, a third co-defendant] say after he had talked about the amount of crack that Bruce [the victim] had?
>
> [Mr. Walsh.] He was wanting to go get it.
>
> Q. Okay. Did he talk about you-all coming with him?
>
> A. Yeah.
>
> Q. And what was the purpose of you coming with him?
>
> A. I guess to try to take his dope.
>
> Q. Why do you say that?
>
> A. Because Ben said, "You-all hold him. I'll take his dope."
>
> Q. How did you guys get from the living room to whatever car you got into?
>
> A. We walked.
>
> Q. Was everybody in the living room when Ben said that?

A. I think so.

In addition, defendant's cellmate testified that defendant knew about the plan to rob the victim:

> [The State.] Okay. . . . What did the defendant tell you was their purpose for going up to Bruce Barnes' house that night?
>
> [Mr. Dickerson.] To get crack.
>
> Q. And did he describe how they were going to get that crack?
>
> A. One way or another.

Defense counsel effectively attempted to discredit this evidence by arguing that both of these witnesses gained concessions from the State for their testimony and pointing to inconsistencies in Mr. Walsh's previous statements. Nonetheless, it is not this Court's function to evaluate the credibility of a witness; the jury here apparently believed these witnesses, as it was free to do. In addition to the above testimony describing defendant's knowledge of the robbery plan, Ogle's testimony on this point was not crystal clear. At first she testified only that defendant went armed to the victim's house because defendant knew the victim had a gun and knew they were going to get drugs:

> [Ms. Ogle.] He said he took [the knife] before they left. And I said, "Why would you take a knife from my kitchen that I used with you to buy drugs?"
>
> [The State.] Did he respond to that statement – or your question?
>
> A. "Well, Bruce has got a gun. We know he has got a gun."
>
> Q. Did James ever tell you why he went up to Bruce's house that night?
>
> A. Said they went to get crack.

This testimony does not necessarily contradict the theory that defendant and the others went to the victim's house to buy drugs (a version of events presented earlier at trial by co-defendant Ben Watson). Later, Ogle's testimony changed slightly:

> Q. [In] [w]hich conversation did the defendant tell you why they went up to Bruce Barnes' house that night?

> A. It was probably the next day, the 10th. We were riding, just like we did always, out on the back dirt roads. And he said that they had went over there to buy crack. He said that he knew that Ben had planned to rob him.

Ogle then clarified her statement, appearing to explain that she meant that defendant knew Ben Watson planned to rob the victim earlier the same day:

> Q. And I believe you just had testified that James knew that Ben planned to rob him; is that what you testified?
>
> A. Right, but he wasn't with him when he robbed him because he didn't go the first time.

Given the confusion and inconsistencies in her testimony and the existence of other witnesses' testimony regarding defendant's knowledge of the plan to rob the victim on the night of 9 December 2009, Ogle's testimony becomes less significant. Taken together, these three witnesses potentially strengthened the State's case against defendant; however, the State could prove even without Ogle's testimony that defendant knew about the plan to rob the victim. As such, any alleged bias resulting from a fight between Ogle and her family becomes less probative.

Third, we hold that the trial court did not abuse its discretion in excluding the evidence under a Rule 403 balancing test. Under Rule 403, "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." N.C.G.S. § 8C-1, Rule 403 (2013).

> We review a trial court's decision to exclude evidence under Rule 403 for abuse of discretion. An abuse of discretion results when "the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision. In our review, we consider not whether we might disagree with the trial court, but whether the trial court's actions are fairly supported by the record."

State v. Whaley, 362 N.C. 156, 160, 655 S.E.2d 388, 390 (2008) (citing and quoting *State v. Peterson*, 361 N.C. 587, 602-03, 652 S.E.2d 216, 227 (2007), *cert. denied*, 552 U.S. 1271, 128 S. Ct. 1682, 170 L. E. 2d 377

(2008)). In weighing the probative value against any potential Rule 403 concerns, the trial court stated:

> I rule under 403 that the probative value is substantially outweighed by the confusion of the issues involving her eviction and the problems that she might have had with her sisters; that there is no -- it's not fair to tie whatever problem she had with her sisters to the defendant; that may be prejudicial to the defendant.

Defense counsel then tried to have only a portion of the tape admitted, but the trial court rejected the argument again, reiterating:

> All right. I decline that request for the same reasons, that I think it would open up an area that would be confusing to the jury; that you may ask her about any problems, if you desire, about her feelings about her family. But anything about an eviction, it seems to me that that are things that don't relate to the defendant necessarily . . . .
>
> . . . .
>
> It opens up areas that are not necessary and are confusing. And under Rule 403 and the balancing test, I'm going to keep it out as the gatekeeper of the evidence.

Such a ruling was not an abuse of discretion. The trial court here looked at the weak probative value of the evidence and weighed it against the confusion that could result from drawing the jury into a family feud that was tangential to the death of the victim here. We hold that it was not "manifestly unsupported by reason," *id.* at 160, 655 S.E. 2d at 390, for the trial court to rule that the probative value of the voice mail message was outweighed by the other concerns under Rule 403.

Having found no abuse of discretion, we need not examine any potential prejudice to defendant. Accordingly, for the reasons stated above, the opinion of the Court of Appeals is reversed. We remand this case to that court for consideration of defendant's remaining issue on appeal and if necessary, for additional proceedings not inconsistent with this opinion.

REVERSED AND REMANDED.

LEXISNEXIS RISK DATA MANAGEMENT INC., A FLORIDA CORPORATION, AND
LEXISNEXIS RISK SOLUTIONS INC., A GEORGIA CORPORATION
v.
NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE
COURTS; MARION R. WARREN, IN HIS OFFICIAL CAPACITY
AS INTERIM DIRECTOR OF THE NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE COURTS; AND
JENNIFER KNOX, IN HER OFFICIAL CAPACITY AS THE CLERK OF WAKE COUNTY SUPERIOR COURT

No. 101PA14

Filed 21 August 2015

Public Records—court records—private party request for copy of Automated Criminal/Infraction System—nonexclusive contracts—sole means of remote electronic access

The Court of Appeals erred by concluding that the Public Records Act provided the legal basis for granting plaintiff private companies' request seeking a copy of the Automated Criminal/Infraction System (ACIS) from the North Carolina Administrative Office of the Courts. While the Public Records Act applies generally to state government records, N.C.G.S. § 7A-109 is specifically limited to court records. The General Assembly intended that the nonexclusive contracts authorized in section 7A-109(d) be the sole means of remote electronic access to ACIS. This case was remanded to the Court of Appeals for consideration of plaintiffs' remaining issues on appeal.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, ___ N.C. App. ___, 754 S.E.2d 223 (2014), affirming in part and reversing and remanding in part an order entered on 8 February 2013 by Judge James E. Hardin, Jr. in Superior Court, Wake County. Heard in the Supreme Court on 24 February 2015.

Nelson Mullins Riley & Scarborough LLP, by Reed J. Hollander; and Meyer, Klipper & Mohr, PLLC, by Christopher A. Mohr, pro hac vice, for plaintiff-appellees.

Roy Cooper, Attorney General, by Grady L. Balentine, Jr., Special Deputy Attorney General, for defendant-appellants N.C. Administrative Office of the Courts and Marion R. Warren.

Arnall Golden Gregory LLP, by W. Jerad Rissler, for Consumer Data Industry Association, amicus curiae.

Stevens Martin Vaughn & Tadych, PLLC, by Hugh Stevens, for The News and Observer Publishing Company, Capitol Broadcasting Company, Inc., Time-Warner Entertainment-Advance Newhouse Partnership, DTH Media Corporation, and North Carolina Press Foundation, Inc., amici curiae.

Kilpatrick Townsend & Stockton, LLP, by Phillip A. Harris, Jr. and Joseph S. Dowdy, for Associate Professor Ryan Thornburg, amicus curiae.

EDMUNDS, Justice.

In this case, we consider whether our state's Public Records Act, N.C.G.S. §§ 132-1 to -10 requires the North Carolina Administrative Office of the Courts to issue a copy of the Automated Criminal/Infraction System to a private party. We hold that N.C.G.S. § 7A-109(d), addressing "remote electronic access" to court records, is a more specific statute that overrides applicability of the Public Records Act here. In addition, we conclude that the legislature intended that remote electronic access to the Automated Criminal/Infraction System be available solely through nonexclusive contracts, as provided in section 7A-109(d). Accordingly, we reverse the decision of the Court of Appeals.

The Automated Criminal/Infraction System (ACIS) is an electronic compilation of all criminal records in North Carolina. While the North Carolina Administrative Office of the Courts (AOC) administers and maintains ACIS, the information contained in ACIS is entered on a continuing, real-time basis by the individual Clerks of Superior Court, or by an employee in that Clerk's office, from the physical records maintained by that Clerk. Any subsequent modifications to that information are under the exclusive control of the office of the Clerk that initially entered the information, so that personnel in one Clerk's office cannot change records entered into ACIS by personnel in a different Clerk's office. In other words, the information in ACIS both duplicates the physical records maintained by each Clerk and constitutes the collective compilation of all records individually entered by the one hundred Clerks of Court. ACIS includes information not subject to disclosure, and not every employee in each Clerk's office can access all the information in ACIS.

The parties do not dispute that the public has various avenues of access to the information in ACIS that is subject to disclosure. Each Clerk's office possesses a public terminal, commonly known as a "green

screen," that any member of the public may use to search within ACIS. Members of the public can also access information that has been entered into ACIS either by directly viewing in the appropriate Clerk's office the physical records from which ACIS information is derived or by requesting copies of those records from that Clerk's office. Private parties may obtain remote electronic access to ACIS by entering into a contract with the AOC, as permitted by N.C.G.S. § 7A-109(d).

Plaintiffs, two private corporations that aggregate public information in their private databases, including information gleaned from criminal records, and then sell access to their databases to public and private entities, seek a copy of the ACIS database itself via the Public Records Act. On 23 September 2011, plaintiffs sent written public records requests to then-AOC Director Judge John W. Smith, II and then-Wake County Clerk of Superior Court N. Lorrin Freeman. Plaintiffs' requests to both were virtually identical, seeking an index of all computer databases created or compiled by the recipient's office and "[t]he entire computer database(s) which contain criminal records information" available to the recipient of the request. Plaintiffs asked that the material be supplied in hard copy and in electronic formats.

Both recipients interpreted the request as seeking the information contained in ACIS. The AOC responded by sending plaintiffs' attorney a compact disk containing copies of the "indexing done to date for databases maintained by the NCAOC and subject to G.S. § 132-6.1." However, the AOC declined to produce an index of the ACIS database, pointing out N.C.G.S. § 132-6.1(b), a provision in the Public Records Act that addresses such indices, does not apply to ACIS because ACIS predated enactment of that statute. *See* N.C.G.S. § 132-6.1(b) (2013). The AOC also declined to provide a copy of ACIS, asserting that the individual Clerks of Superior Court are custodians of the records and the data in those records, adding that the AOC merely "created and maintains ACIS in its administrative support role for the [C]lerks." In addition, the AOC pointed out that distribution of and access to ACIS is accomplished through non-exclusive licensing agreements, citing N.C.G.S. § 7A-109(d).

Defendant Freeman responded separately, denying that her office possessed any records responsive to plaintiffs' request. While acknowledging that her office "is responsible for data entry into a number of case index systems," she stated that her office does not maintain those databases and is incapable of providing copies of those systems.

On 13 October 2011, plaintiffs filed suit in Superior Court, Wake County, seeking an order requiring production of the requested

materials pursuant to N.C.G.S. § 132-9(a). Plaintiffs requested that the court declare "that the ACIS database is a public document or public information as defined by N.C. Gen. Stat. § 132-1;" declare that defendant Smith or defendant Freeman, or both, are "custodian[s] of the ACIS database and of the electronic criminal records information contained therein;" and order either or both defendants "to provide to Plaintiffs a complete copy of the ACIS database."

On 15 December 2011, defendants filed their joint answer. Defendants first responded that, unlike criminal records, ACIS is not subject to the Public Records Act. Second, defendants claimed that each individual Clerk of Court is a custodian of the criminal records relating to his or her county but is unable to make an electronic copy of the entire ACIS database, while defendant AOC has possession and control of ACIS but is not the custodian of the criminal records contained within it.

On 6 February 2012, plaintiffs filed a Motion for Judgment on the Pleadings. Following a 10 August 2012 hearing, the trial court on 31 January 2013 issued an order denying plaintiffs' motion, granting judgment for defendants on their responsive pleadings, and dismissing the case. In its order, the trial court concluded as a matter of law that, while defendant Freeman was the custodian of criminal records in Wake County, she did not violate the Public Records Act because her office "does not compile or create databases for criminal records information." The trial court further concluded as a matter of law that defendant Smith did not violate the Public Records Act because the "AOC is not the custodian of the criminal records stored in the ACIS database," even though the AOC "administers, supports, and maintains" ACIS. Finally, the trial court concluded as a matter of law that "[r]equiring . . . AOC to provide a copy of the entire ACIS database would negate the provisions of N.C. Gen. Stat. § 7A-109(d)."

The Court of Appeals affirmed the trial court's conclusions and judgment as to defendant Freeman but reversed the trial court as to defendants Smith and the AOC. *LexisNexis Risk Data Mgmt. Inc. v. N.C. Admin. Office of the Courts*, ___ N.C. App. ___, 754 S.E.2d 223 (2014). Noting that the parties agreed that the individual criminal records maintained by Clerks of Court are public records and that each Clerk is the custodian of the records in that Clerk's office, the Court of Appeals found that "once the [C]lerks of [C]ourt enter information from their criminal records into ACIS, the database becomes a new public record 'existing distinctly and separately from' the individual criminal records from which it is created." *Id.* at ___, 754 S.E.2d at 227. The Court of Appeals then concluded that ACIS, having incorporated that

newly-entered information, is an "electronic data-processing record" under section 132-1(a) and thus is a public record subject to disclosure under the Public Records Act. *Id.* at ___, 754 S.E.2d at 227. The Court of Appeals next concluded that the source of the information entered into ACIS was immaterial because the Public Records Act refers to custodians of records, not custodians of information, and the AOC was the custodian of the newly-created public record. *Id.* at ___, 754 S.E.2d at 227-28. The Court of Appeals further noted that each Clerk's custodianship of the criminal records from which ACIS is compiled is immaterial because plaintiffs were seeking a copy of ACIS, not copies of the criminal records. *Id.* at ___, 754 S.E.2d at 227-28. That court also found irrelevant AOC's argument that employees of individual Clerk's offices entered data into ACIS and could later modify it, observing that "the clerks have acted at the direction of the AOC." *Id.* at ___, 754 S.E.2d at 228 (relying upon *News & Observer Publ'g Co. v. Poole*, 330 N.C. 465, 412 S.E.2d 7 (1992)). The Court of Appeals thus held that ACIS is a public record and AOC is its custodian. *Id.* at ___, 754 S.E.2d at 228.

Finally, the Court of Appeals rejected the trial court's conclusion that granting access to plaintiffs would "negate" N.C.G.S. § 7A-109(d). *Id.* at ___, 754 S.E.2d at 228. The Court of Appeals found that this provision and the Public Records Act were not mutually exclusive but were instead complementary means of accessing judicial records. *Id.* at ___, 754 S.E.2d at 228-29 ("The plain language of this subsection simply allows the AOC to offer an additional method of access to 'court records' . . . ."). Again citing *Poole*, the Court of Appeals concluded that the language of section 7A-109 did not provide a "clear statutory exemption or exception" that excluded ACIS from the Public Records Act. *Id.* at ___, 754 S.E.2d at 229 (quoting *Poole*, 330 N.C. at 486, 412 S.E.2d at 19). We allowed the Petition for Discretionary Review filed by defendants Smith and the AOC.

Defendants contend both that the Court of Appeals opinion negates N.C.G.S. § 7A-109 and that the ongoing process of making additions and amendments to ACIS does not create a new public record distinct from the original records entered by the Clerks of Court. Accordingly, we must examine the relationship between the Public Records Act and N.C.G.S. § 7A-109, applying de novo review. *In re Vogler Realty, Inc.*, 365 N.C. 389, 392, 722 S.E.2d 459, 462 (2012) (citation omitted).

In their initial letters to defendants and in their complaint, plaintiffs relied on the Public Records Act and did not cite section 7A-109. The Public Records Act, codified in Chapter 132 of the General Statutes,

generally governs access to public records in North Carolina, and section 132-6(a) states that "[e]very custodian of public records shall permit any record in the custodian's custody to be inspected and examined at reasonable times and under reasonable supervision by any person, and shall . . . furnish copies thereof." N.C.G.S. § 132-6(a) (2013). This Court has consistently found that "it is clear that the legislature intended to provide that, as a general rule, the public would have liberal access to public records." *News & Observer Publ'g Co. v. State ex rel. Starling*, 312 N.C. 276, 281, 322 S.E.2d 133, 137 (1984) (citation omitted); *see also State Emps. Ass'n of N.C. v. N.C. Dep't of State Treasurer*, 364 N.C. 205, 211, 695 S.E.2d 91, 95 (2010).

However, the Public Records Act anticipates that exceptions may apply, *see* N.C.G.S. § 132-1(b) (2013) ("[I]t is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost *unless otherwise specifically provided by law.*" (emphasis added)), and indeed, the General Assembly has enacted a separate statute applicable to court records, *id.* § 7A-109 (2013); *see Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 463, 515 S.E.2d 675, 685 (1999) (acknowledging that court records are public records but finding that "[t]he public's right of access to court records is provided by N.C.G.S. § 7A-109(a), which specifically grants the public the right to inspect court records in criminal and civil proceedings").[1] Section 7A-109(a) addresses the maintenance of court records and provides, *inter alia*, that "these records shall be open to the inspection of the public during regular office hours." N.C.G.S. § 7A-109(a). This statute incorporates themes similar to those found in the Public Records Act, such as liberal access, *compare* N.C.G.S. § 132-6(a) ("*Every* custodian . . . shall permit *any record* . . . to be inspected and examined at reasonable times . . . and shall, *as promptly as possible*, furnish copies thereof . . . ." (emphases added)), *with id.* § 7A-109(a) ("[R]ecords shall be open to the inspection of the public.") *and* -109(d) (stating that the provisions therein are intended "to facilitate public access to court records"); promotion of good government, *compare id.* § 132-6(b) (2013) ("No person requesting to inspect and examine public records, or to obtain copies thereof, shall be required to disclose the purpose or motive for the request."), *with id.* § 7A-109(a)(6) (describing the statute's purpose as

1. In *Virmani*, this Court was careful to observe that North Carolina courts "always retain the necessary inherent power granted them by Article IV, Section 1 of the North Carolina Constitution to control" their records "in the proper circumstances" and that "the power to do so is a necessary power rightfully pertaining to the judiciary as a separate branch of the government, and the General Assembly has 'no power' to diminish it in any manner." 350 N.C. at 463, 515 S.E.2d at 685 (quoting N.C. Const. art. IV, § 1).

"provid[ing] a reservoir of information useful to those interested in measuring the effectiveness of the laws and the efficiency of the courts in administering them"); and affordability, *compare id.* § 132-1(b) (records shall be provided for "free or at minimal cost," defining the latter as "the actual cost of reproducing . . . the information"), *with id.* § 7A-109(d) (providing that the contracts "with third parties to provide remote electronic access to the records by the public" shall limit fees to those necessary for "reasonable cost recovery").

Nevertheless, the Public Records Act and section 7A-109 are not identical, and if

> "there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized . . . ; but, to the extent of any necessary repugnancy between them, the special statute . . . will prevail over the general statute . . . ."

Nat'l Food Stores v. N.C. Bd. of Alcoholic Control, 268 N.C. 624, 628-29, 151 S.E.2d 582, 586 (1966) (quoting 82 C.J.S. *Statutes* § 369, at 839-40 (1953)) ; *see also Krauss v. Wayne Cty. Dep't of Soc. Servs.*, 347 N.C. 371, 378, 493 S.E.2d 428, 433 (1997); *McIntyre v. McIntyre*, 341 N.C. 629, 631, 461 S.E.2d 745, 747 (1995). While the Public Records Act applies generally to state government records, section 7A-109 is specifically limited to court records. Consistent with our holding in *Virmani*, we conclude that section 7A-109 controls plaintiffs' request for these records. Accordingly, we find that the Court of Appeals erred by concluding that the Public Records Act provided the legal basis for granting plaintiffs' request and that section 7A-109 was inapposite to an analysis of access to such records.

We next consider whether the material requested by plaintiffs is available to them under section 7A-109 by means other than a nonexclusive contract with the AOC, as set out in subsection 7A-109(d). Because this statute does not refer to the "custodian" of the pertinent records, we need not address arguments that are dependent on a determination of who is the custodian of ACIS and the records included in that database. Instead, we observe that section 7A-109(a) focuses on providing broad access to the public to review and copy court records that are not legally protected from disclosure. In 1997, subsequent to enactment of the Public Records Act, the North Carolina General Assembly added subsection (d) to section 7A-109, providing that "[i]n order to facilitate public access to court records, except where public access is prohibited

by law, the [AOC] Director may enter into one or more nonexclusive contracts under reasonable cost recovery terms with third parties to provide remote electronic access to the records by the public." *See* Act of June 11, 1997, ch. 199, sec. 1, 1997 N.C. Sess. Laws 389, 390.

The parties dispute the meaning and import of subsection (d). Defendants have argued consistently that the legislature intended that subsection (d) be the exclusive means of remote electronic distribution of and access to ACIS. Plaintiffs, by contrast, argue that the addition of subsection (d) was meant to create an additional means of access, allowing the public the option of either seeking a copy of ACIS through the Public Records Act or contracting for remote electronic access to it pursuant to N.C.G.S. § 7A-109(d). The Court of Appeals agreed with plaintiffs. *LexisNexis*, ___ N.C. App. at ___, 754 S.E.2d at 228-29 ("The plain language of this subsection simply allows the AOC to offer an additional method of access to 'court records' via 'remote electronic access.' " (brackets omitted)).

In resolving this dispute, we are mindful that "[t]he cardinal principle of statutory construction is that the intent of the legislature is controlling." *Sutton v. Aetna Cas. & Sur. Co.*, 325 N.C. 259, 265, 382 S.E.2d 759, 763 (1989) (quoting *State v. Fulcher*, 294 N.C. 503, 520, 243 S.E.2d 338, 350 (1978)). Here, we find guidance in the General Assembly's addition of subsection (d) and its conditions specifically relating to remote electronic access to court records. Just as a more specific statute will prevail over a general one, *see, e.g.*, *In re Testamentary Tr. of Charnock*, 358 N.C. 523, 529, 597 S.E.2d 706, 710 (2004), a specific provision of a statute ordinarily will prevail over a more general provision in that same statute, *see, e.g.*, *State ex rel. Utils. Comm'n. v. Lumbee River Elec. Membership Corp.*, 275 N.C. 250, 260, 166 S.E.2d 633, 670 (1969). Moreover, just as it "is true *a fortiori*" that a specific statute prevails over a general one "when the special act is later in point of time," *Nat'l Food Stores*, 268 N.C. at 629, 151 S.E.2d at 586 (quoting 82 C.J.S. *Statutes* § 369, at 842-43), the later addition of a specific provision to a pre-existing more general statute indicates the General Assembly's most recent intent, *see Adair v. Orrell's Mut. Burial Ass'n*, 284 N.C. 534, 541, 201 S.E.2d 905, 910 (1974) ("The conflicting provisions in . . . the statute first enacted must yield to the provision of [the later enacted statute], since the later statute represents the latest expression of legislative will and intent."), *appeal dismissed*, 417 U.S. 927, 94 S. Ct. 2637, 41 L. Ed. 2d 231 (1974). While subsection 7A-109(a) applies to court records in general, later-added subsection (d) focuses narrowly on court records maintained in electronic form. Accordingly, we conclude that the General

Assembly intended that the nonexclusive contracts authorized in section 7A-109(d) be the sole means of remote electronic access to ACIS.

We note in closing that our holding does not deny anyone access to any public record not otherwise restricted by law. Rather, this decision acknowledges the General Assembly's intent to limit the methods of access to one narrow category of court records. Access to the public information maintained in ACIS remains fully available by obtaining the physical records from the appropriate Clerk of Court, through the "green screen" terminal maintained in the local courthouse, or by means of a contract with the AOC for remote access. Nor will our holding impose an undue financial burden on those seeking access to criminal records. *See* N.C.G.S. § 7A-109(d) (authorizing the AOC to enter into remote electronic access contracts that incorporate "reasonable cost recovery terms"). North Carolina's robust tradition that "strongly favors the release of public records to increase transparency in government" endures. *State Emps. Ass'n*, 364 N.C. at 214, 695 S.E.2d at 97.

This case is remanded to the Court of Appeals for consideration of plaintiffs' remaining issues on appeal.

REVERSED AND REMANDED.

Justice ERVIN did not participate in the consideration or decision of this case.

STATE OF NORTH CAROLINA
v.
JASON LYNN YOUNG

No. 124PA14

Filed 21 August 2015

1. Appeal and Error—preservation of issues--use of civil pleadings in criminal prosecution—objection required

The Court of Appeals erred in a prosecution for first-degree murder by determining that defendant was entitled to a new trial on the grounds that the admission of evidence concerning a wrongful death and declaratory judgment action and a child custody action violated N.C.G.S. § 1-149. That statute provides that pleadings

cannot be used in a criminal prosecution against the party as proof of a fact admitted or alleged, but the N.C. Supreme Court has clearly indicated that a failure to object to the admission of evidence that allegedly violates N.C.G.S. § 1-149 results in a waiver of the right to challenge the admission of that evidence on appeal.

2. Evidence—preservation of issues—risk of prejudice outweighing probative value—use of civil pleadings in criminal case

The Court of Appeals erred by awarding a first-degree murder defendant a new trial based upon the admission of evidence concerning defendant's response to a wrongful death and declaratory judgment action and a child custody action where defendant objected under N.C.G.S. § 8C-1, Rule 403. As a general proposition, appellate decisions holding that a trial court erroneously failed to sustain an objection lodged pursuant to N.C.G.S. § 8C-1, Rule 403, tend to rest on determinations that the admission of the evidence in question served little or no purpose other than to inflame the passions of the jury. A careful review of the record demonstrated that the evidence relating to the wrongful death and declaratory judgment action had at least some material probative value for the purpose of challenging the validity of defendant's alibi defense. Moreover, the trial court made a serious attempt to address the risk of unfair prejudice.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, ___ N.C. App. ___, 756 S.E.2d 768 (2014), vacating a judgment entered on 5 March 2012 by Judge Donald W. Stephens in Superior Court, Wake County, and remanding for a new trial. Heard in the Supreme Court on 19 May 2015.

Roy Cooper, *Attorney General*, *by Daniel P. O'Brien*, *Special Deputy Attorney General*, *and Amy Kunstling Irene*, *Assistant Attorney General*, *for the State-appellant.*

Staples S. Hughes, *Appellate Defender*, *by Barbara S. Blackman*, *Assistant Appellate Defender*, *for defendant-appellee.*

ERVIN, Justice.

Defendant Jason Lynn Young was convicted of the first-degree murder of his wife, Michelle Fisher Young. A unanimous panel of the Court of Appeals vacated defendant's conviction and ordered a new trial. We now reverse the Court of Appeals' decision and remand this case to the

Court of Appeals for consideration of defendant's remaining challenges to the trial court's judgment.

I. Factual Background

A. Substantive Facts

1. State's Evidence

a. Youngs' Marital Difficulties

As of 2 November 2006, the Youngs had been married for slightly more than three years. The Youngs' friends assumed that their courtship, which had been less than idyllic, resulted in marriage solely because Ms. Young became pregnant. The Youngs' relationship was described as "volatile," with the couple tending to argue in public over relatively petty matters. Ms. Young's sister, Meredith Fisher, thought that defendant was irresponsible and treated Ms. Young poorly. Although Meredith Fisher told Ms. Young that she should leave defendant, Ms. Young made no effort to divorce her husband. On one occasion, defendant told a friend that he was afraid that, if he and Ms. Young divorced, Ms. Young would leave the Raleigh area and move to New York with their two-and-one-half-year-old daughter, Emily.[1]

Among the sources of conflict which the Youngs experienced was the role played by Ms. Young's mother, Linda Fisher, who visited the Youngs for extended periods of time, wanted to move to North Carolina so that she could spend more time with her daughter and granddaughter, and offered to renovate the Youngs' house so that she could live there. Although Ms. Young wanted to have her mother's assistance with the family cooking, cleaning, and child care responsibilities, defendant was adamantly opposed to sharing a residence with Linda Fisher.

On 12 September 2006, defendant sent an e-mail to an address that had been used by his former fiancée, Genevieve Cargol. During their engagement, defendant had engaged in acts of domestic violence against Ms. Cargol, including an incident in which he forcibly removed the engagement ring that he had given her. Although he had not had any contact with her for a couple of years, defendant professed his love for Ms. Cargol in the 12 September 2006 e-mail while indicating that he did not intend to act on his feelings.

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1. "Emily" is a pseudonym used throughout this opinion to protect the identity of the Youngs' daughter.

At the end of September 2006, defendant began communicating on a regular basis with Michelle Money, who was one of Ms. Young's college sorority sisters and who believed that her husband was being unfaithful to her. On 7 October 2006, defendant mailed an anniversary card to Ms. Young from Orlando, Florida, where he had gone to spend time with Ms. Money. Defendant had sexual intercourse with Ms. Money during his visit to her in Orlando and informed a friend that he had fallen in love with Ms. Money. In the thirty days prior to 2 and 3 November 2006, defendant and Ms. Money exchanged over 400 calls and text messages.

About ten days prior to Ms. Young's death, defendant had sexual intercourse with Carol Ann Sowerby, another family friend, in the Youngs' residence. Ms. Young was out of town at the time that this incident occurred. On that occasion, defendant took Ms. Sowerby's wedding ring from her and pretended to swallow it. However, defendant returned Ms. Sowerby's ring on the following day.

The Youngs e-mailed each other on 24 October 2006 about the extent to which they should undergo marriage counseling. Although defendant reiterated his willingness to attend counseling sessions, he reminded Ms. Young that the two of them had agreed that she would obtain individual counselling first. During a session with a therapist on 27 October 2006, Ms. Young stated that she was upset that defendant waited until the end of the weekend before doing his household chores, that their childless friends had more money than the Youngs did, that defendant wanted their relationship to be more sexual in nature, and that defendant drank at tailgate parties. On the other hand, Ms. Young told the therapist that her current pregnancy was planned.

About three weeks prior to Ms. Young's death, defendant told a friend after having had an argument with his wife that "he was done." On 27 October 2006, defendant stated in the presence of both Ms. Young and Meredith Fisher that "all of this would just, you know, go away if you'd let me have a girl on the side." Although Ms. Young did not claim to have been physically abused by her husband, the therapist concluded that Ms. Young had experienced verbal abuse. Ms. Young told Meredith Fisher that defendant had thrown a remote control device at her on 1 November 2006.

b. Events Occurring on 2-3 November 2006

i. Events Involving Ms. Young

As a result of the fact that defendant was scheduled to conduct a sales call in Clintwood, Virginia, at 10:00 a.m. on Friday, 3 November

2006, Ms. Young made plans to spend the evening of 2 November 2006 with her friend Shelly Schaad, whose husband was also expected to be out of town on the evening in question. When Ms. Schaad arrived at the Youngs' residence at approximately 6:30 p.m. on 2 November 2006, she was surprised to discover that defendant was still at home. Although he was invited to stay and dine with Ms. Schaad and Ms. Young, defendant declined this invitation and indicated that he planned to eat at a Cracker Barrel while en route to Galax, Virginia, where he intended to spend the night before continuing on to Clintwood in the morning.

After Ms. Schaad and Ms. Young ate dinner, they bathed Emily, diapered her, and dressed her in her pajamas. During this process, Ms. Young told Ms. Schaad that she and defendant had been arguing about plans for the upcoming holidays. Although Ms. Young wanted Linda Fisher to stay with the family from Thanksgiving through Christmas, defendant was opposed to such a lengthy visit. While Ms. Schaad and Ms. Young watched *Grey's Anatomy*, defendant made one of the seven calls that he placed to the house that evening.

In view of the fact that she had an "eerie feeling" that the house was being watched, Ms. Schaad asked Ms. Young to walk her to her car when she left the Youngs' residence between 10:00 and 10:30 p.m. According to Terry Tiller, a newspaper delivery person, certain interior, exterior, and driveway lights were on and a light-colored SUV was positioned in the yard or on the street in front of the Youngs' residence when she passed it between 3:30 and 4:00 a.m. on 3 November 2006.

ii. Events Involving Defendant

After buying gas in Raleigh at 7:30 p.m. on 2 November 2006, defendant called his mother, Pat Young. During this conversation, defendant discussed his business trip, his plans for the Thanksgiving holiday, and certain items of furniture that his mother planned to give him. Among other things, defendant told Pat Young that he would check with Ms. Young to see if he could spend Friday night at his mother's residence in Brevard in order to pick up the furniture that Pat Young planned to give him before leaving for Raleigh early Saturday morning.

After purchasing dinner at a Cracker Barrel restaurant in Greensboro at 9:25 p.m., defendant traveled in his white Ford Explorer to Hillsville, Virginia, where he checked into a Hampton Inn at 10:54 p.m. According to surveillance camera footage taken at both the Hampton Inn and the Cracker Barrel, defendant was wearing a light shirt, jeans, and brown slip-on shoes. Although defendant entered his hotel room using a key card at 10:56 p.m., he never used that key card again. Just before

midnight, hotel surveillance cameras showed defendant at the front desk and as he walked down a hallway leading to both the stairs providing access to the upper floors and to an exit door on the western end of the hotel. At that time, defendant was wearing a darker-colored shirt with a light-colored horizontal stripe across the chest. No further images of defendant appear on surveillance footage taken at the hotel during the remainder of the night of 2 to 3 November 2006.

Keith Hicks, an employee of the Hillsville Hampton Inn, slid checkout receipts under the doors leading to occupied guest rooms between 3:00 and 5:00 a.m. on 3 November 2006. At approximately the same time, Mr. Hicks hung copies of the weekend edition of *USA Today* on the door handles of the same rooms. After taking advantage of the Hampton Inn's express checkout service, defendant left the hotel on 3 November 2006 without going to the front desk. As a result of the fact that he did not check out in person, the Hampton Inn had no record of the actual time at which defendant left the premises. However, defendant did call his mother at 7:40 a.m. on 3 November, with this call having been made using a cell tower near Wytheville, Virginia. Defendant arrived about thirty minutes late for his 10:00 a.m. sales call.

iii. Defendant's Testimony at the First Trial

In his testimony at the first trial, which the State introduced into evidence at the second trial, defendant denied having killed his wife, having been present when she was killed, or having any knowledge of who had killed her. Although defendant admitted that he had not been a good husband, he claimed that he loved his wife, wanted their marriage to work, and was ecstatic that his wife had become pregnant with a boy before her death. Defendant did not believe that he and Ms. Young argued more than other couples. Instead, defendant thought that the only difference between the Youngs and other couples was that the Youngs argued more in public. Defendant denied having ever assaulted his wife.

In November 2006, defendant had obtained a new job selling electronic health records software. After his employer set up the Clintwood sales call for relatively early on the morning of 3 November 2006, defendant decided to stay overnight at a hotel between Raleigh and Clintwood instead of attempting to make the entire drive that morning. Upon checking in at the Hillsville Hampton Inn on the night of 2 November, defendant called both his wife and Ms. Money. As a result of the fact that he was nervous about the sales call that he was scheduled to make the following morning, defendant decided to review the demonstration software that he intended to use during that meeting. However, when

he began the review process, defendant discovered that he had left his laptop charger in his car.

Upon making this determination, defendant left the door to his room unlatched and walked downstairs to the exit nearest to the place where he had parked. In view of the fact that the exit door would not open from the exterior without a key card and the fact that he had left his key card in his room, defendant broke a stick off of a nearby shrub and stuck it in the door while he went to retrieve his charger. After returning to his room and reviewing the materials for the upcoming sales meeting, defendant decided to obtain a copy of *USA Today* and smoke a cigar.[2] As a result, defendant left his room without fully closing the door for a second time, got a copy of *USA Today* from the desk clerk, walked down a hallway to the exit door, stuck another stick in the door, and went outside to smoke his cigar. Once he had finished his cigar, defendant re-entered the hotel, returned to his room, and went to sleep. Defendant claimed that he had been late to his sales call in Clintwood on the following morning because he had gotten lost.

iv. Testimony of Ms. Calhoun

The Four Brothers BP in King, North Carolina, a service station located at an exit along the most direct route between Raleigh and Hillsville, was the only location at which gasoline could be purchased at that exit in the early morning hours of 3 November 2006.[3] According to Gracie Calhoun, an employee at the Four Brothers BP station, a man drove a white SUV to the farthest pump at approximately 5:00 to 5:30 a.m. on 3 November 2006 and made repeated efforts to pump gas. After the man entered the store and cursed her because the pumps were not operational, Ms. Calhoun told the prospective customer that, at that time of day, customers must provide money or identification before the gasoline pumps would be activated. At that point, the man, whom Ms. Calhoun identified from a photograph presented to her by investigating officers and in open court as defendant,[4] threw twenty dollars in cash at

2. A number of witnesses testified that defendant did not smoke and hated smoking. However, a humidor was found in the Youngs' house after Ms. Young's death and a credit card owned by Ms. Young was used to purchase cigars in 2004.

3. An investigating officer made the trip from Hillsville to Raleigh in a Ford Explorer during a time when traffic was light in two hours and twenty-five minutes.

4. In her trial testimony, Ms. Calhoun claimed to have been face-to-face with the man in the store and to have gotten a good look at him. On cross-examination, Ms. Calhoun acknowledged that she had been hit by a truck when she was six years old and sustained a brain injury for which she continued to collect disability benefits and which had left her with lasting memory problems.

her, returned to the pump at which his vehicle was parked, and pumped fifteen dollars' worth of gasoline into his vehicle before driving off without collecting his change. According to receipts obtained by investigating officers, a fifteen dollar gasoline purchase was made at the Four Brothers BP station at 5:27 a.m. on 3 November 2006 and a twenty dollar gasoline purchase was made at the Four Brothers BP station some nine minutes later.

v. Hampton Inn Security Cameras

Early on 3 November 2006, Mr. Hicks discovered that the first floor emergency door that led from the western stairwell to the exterior of the hotel and that is ordinarily locked between 11:00 p.m. and 6:00 a.m. had been propped open with a small red rock that had been obtained from a nearby landscaping bed. After removing the rock, Mr. Hicks shut the door. Upon returning to the front desk, at which still images from the ten surveillance cameras utilized in the hotel could be observed on a rotating basis, Mr. Hicks noticed that the camera in the stairwell associated with the door that had been propped open was not working and returned to that stairwell to investigate the situation. At that point, Mr. Hicks noticed that the camera had been unplugged, with the last image shown on that camera having been made at 11:19:59 p.m. on 2 November 2006. No images were made on the camera in question from 11:20:13 p.m. on 2 November 2006 until Elmer Goad, a Hampton Inn maintenance employee, plugged it back in at 5:50 a.m. on 3 November 2006. However, the camera in question did not remain fully operational for long, since someone pointed it toward the ceiling between 6:34 and 6:35 a.m.

c. Discovery of Ms. Young's Body

Meredith Fisher arrived at the Youngs' residence at around 1:00 p.m. on 3 November 2006 in response to a request from defendant, who had left a voice mail on her cell phone asking her to go the house to pick up the printouts relating to an eBay search for Coach purses that defendant had conducted before leaving on his sales trip so that Ms. Young would not find them. According to Meredith Fisher, defendant claimed that he had been thinking of surprising his wife with a purse as a belated anniversary present.

After arriving at the house, Meredith Fisher entered the residence through the unlocked garage and went into the kitchen. As she walked upstairs in the direction of the home office, Meredith Fisher saw what looked like red hair dye in the bathroom that Emily normally used. Meredith Fisher saw more of the red substance on the upstairs landing and in the master bedroom. Once Meredith Fisher had seen her sister's

body on the floor of the master bedroom, she realized that the red substance that she had observed at various locations throughout the house was blood.

As Meredith Fisher called 911, Emily, who was not wearing a diaper, emerged from under the covers on the bed in the master bedroom. Emily repeatedly asked that she be given band-aids on the grounds that Ms. Young had "boo-boos everywhere."[5] In response to an inquiry posed by the 911 operator about the extent to which Ms. Young had "personal problems," Meredith Fisher replied, "Um not really. You know her and her husband fight a little bit, but nothing too ridiculous."

A paramedic who came to the Youngs' residence in response to Meredith Fisher's call confirmed that Ms. Young had been dead for some time. In addition, the paramedic checked Emily and determined that she was calm, had not sustained any injuries, and was not dehydrated. As a result of the fact that Emily was clean except for the presence of dried blood on her toenails and the bottom and seat of her pajama pants, an officer asked Meredith Fisher if she had cleaned Emily and received a negative answer.

d. Investigative Discoveries

A large amount of dried blood was found around Ms. Young's body, which was discolored, cold, and stiff. In addition, blood spattering appeared on the walls of the master bedroom. According to Dr. Thomas Clark, who performed the autopsy on her body, Ms. Young died from blunt force trauma to her head. Although he did not express any opinion concerning the time at which Ms. Young had died, Dr. Clark did state that Ms. Young had sustained at least thirty blows, the most serious of which had probably been inflicted with a heavy blunt object featuring a rounded surface that caused crescent-shaped skull fractures. In addition, Dr. Clark found signs that Ms. Young had been subjected to manual strangulation. Although Ms. Young had sustained a broken jaw, skull fracturing, brain hemorrhaging, lacerations, abrasions, and dislodged teeth, there was no evidence that she had been the victim of a sexual assault. Ms. Young was approximately twenty weeks pregnant with a son at the time of her death.

Emily's bloody footprints were visible on the floor of the master bedroom, her bathroom, and the second floor landing. In addition, blood

5. After returning to day care following Ms. Young's death, Emily was observed striking two dolls against each other. When asked what she was doing, Emily said that the "mommy doll" was being "spanked" for biting and was covered with "red stuff" and "boo-boos."

smears at the level of a child's height were present in Emily's bathroom. The only blood found outside of the second floor of the Youngs' home appeared on the doorknob leading from the kitchen to the garage, with the DNA markers present in this bloodstain being consistent with Ms. Young's DNA.

Although defendant's DNA and fingerprints were present in the bedroom, none of his fingerprints were blood-stained. At the time that he was examined by officers of the Wake County Sheriff's Office on 7 November 2006, defendant did not have any cuts, bruises, or other injuries to his hands or body aside from a bruised and broken toenail. In addition, investigating officers failed to find any evidence of blood in or on defendant's vehicle, defendant's clothes, or the hotel room in which defendant stayed on 2 November 2006.

According to Agent Michael Smith of the Federal Bureau of Investigation, Agent Andy Parker of the Raleigh/Wake City-County Bureau of Identification, and Special Agent Karen Morrow of the State Bureau of Investigation, bloody footwear impressions made by two distinct shoe types appeared on pillows found near Ms. Young. One of these two sets of footprints was consistent with the impressions that would be made by size twelve Hush Puppy Orbital, Sealy, and Belleville shoes, all of which have the same outsole design. The other set of impressions was made by a shoe type consistent with a size ten Air Fit or Franklin athletic shoe. According to Special Agent Morrow and Special Agent Greg Tart of the SBI, defendant had purchased a pair of size twelve Hush Puppy Orbitals on 4 July 2005, which defendant claimed had been donated to Goodwill. The State never produced a pair of shoes that matched either of these sets of impressions, although investigating officers recovered two pairs of brown shoes from defendant's vehicle on 3 November 2006.[6]

A careful examination of the Youngs' residence indicated that there were no signs that entry had been forced or that the house had been ransacked. However, investigating officers determined that two drawers had been removed from a jewelry box in the master bedroom. DNA testing performed on the jewelry box revealed the presence of four markers that were not consistent with either of the Youngs' DNA. According to Meredith Fisher, Ms. Young "didn't really have a lot of fancy jewelry" with the exception of her wedding and engagement rings, which she rarely removed and did not keep in the jewelry box. Neither of the rings that Meredith Fisher mentioned was found on Ms. Young's body or ever recovered.

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6. A checkout receipt from the Hillsville Hampton Inn and a copy of the weekend edition of *USA Today* were recovered from defendant's Ford Explorer on 3 November 2006 as well.

According to Agent Beth Whitney of the CCBI, Internet searches for purses were made on the Youngs' computer between 7:05 p.m. and 7:23 p.m. on 2 November 2006. Although three fingerprints were lifted from the eBay printouts generated as a result of these searches, only one of them was defendant's, with the other two fingerprints remaining unidentified at the time of trial. In addition, investigating officers determined that someone had checked defendant's personal e-mail account and that MapQuest inquiries for directions between Raleigh and Clintwood had been made on the Youngs' computer on the evening of 2 November 2006 as well. Agent Whitney also discovered that, at some undetermined time, Internet searches concerning the "anatomy of a knockout," "head trauma blackout," "head blow knockout," and "head trauma" had been conducted on the Youngs' computer, which defendant explained as having been related to an accident that he had witnessed. Finally, an examination of defendant's laptop computer revealed no indication that that machine had been used for any work-related purpose on the night of 2 to 3 November 2006.

2. Defendant's Evidence

On the afternoon of 3 November 2006, Linda Fisher called Pat Young and told her that Ms. Young was dead. At that time, defendant was driving from Virginia to Pat Young's residence in Brevard. After defendant's arrival in Brevard, his stepfather told defendant of Ms. Young's death. Upon receiving this information, defendant sank to the ground in disbelief. In addition, defendant sobbed after Meredith Fisher told him that Ms. Young's death had been a homicide.

Shortly after his arrival in Brevard, defendant and various members of his family left for Raleigh in defendant's Explorer, from which defendant's luggage had not been removed. As he traveled to Raleigh, defendant received calls from friends who told him that investigating officers had been asking Meredith Fisher and others if the Youngs had been having marital problems and suggested that he refrain from talking to investigating officers before consulting an attorney. In accordance with advice that he received from his counsel, defendant never answered any questions posed by investigating officers or discussed Ms. Young's death with friends or family members.

A newspaper delivery person drove by the Youngs' home at approximately 3:50 a.m. on 3 November 2006 without noticing anything unusual. Cynthia Beaver noticed that the house and driveway lights were on and that a light-colored "soccer-mom car" in which a white male was seated in the driver's seat and another person, who was possibly female, was

seated in the passenger seat, was positioned at the edge of the driveway associated with the Youngs' residence when she drove by at approximately 5:20 to 5:30 a.m. on the same date. When Fay Hinsley drove past the Youngs' house at approximately 6:15 a.m. on 3 November 2006, she observed an empty SUV positioned at the edge of the driveway. Although she testified that the car she had seen was not on Birchleaf Drive, on which the Youngs' residence was located, Ms. Hinsley insisted that she had seen the car at the Youngs' house.

B. Procedural History

On 14 December 2009, the Wake County Grand Jury returned a bill of indictment charging defendant with murdering Ms. Young. The charge against defendant came on for trial before the trial court and a jury at the 31 May 2011 criminal session of the Superior Court, Wake County. On 27 June 2011, the trial court declared a mistrial after the jury announced that it could not reach a unanimous verdict.

The charge against defendant came on for trial a second time at the 17 January 2012 session of the Superior Court, Wake County, before the trial court and a jury. On 5 March 2012, the jury returned a verdict convicting defendant of first-degree murder. Based upon the jury's verdict, the trial court entered a judgment sentencing defendant to a term of life imprisonment without parole. Defendant noted an appeal to the Court of Appeals from the trial court's judgment.

Before the Court of Appeals, defendant argued that the trial court had committed prejudicial error by allowing the admission of evidence concerning a complaint that had been filed and default judgments that had been entered in a wrongful death and declaratory judgment action that had been brought against him by Linda Fisher as executrix of Ms. Young's estate and a complaint that had been filed in an action in which Linda Fisher and Meredith Fisher sought to obtain custody of Emily from defendant. *State v. Young*, __ N.C. App. __, __, 756 S.E.2d 768, 778 (2014). On 1 April 2014, the Court of Appeals filed an opinion holding that the trial court had committed prejudicial error by admitting evidence concerning the complaint and default judgments in the wrongful death and declaratory judgment action and the complaint in the child custody case on the grounds that the admission of the challenged evidence violated N.C.G.S. § 1-149, and N.C.G.S. § 8C-1, Rule 403. *Id.* at __, __, 756 S.E.2d at 782-84. We now reverse the Court of Appeals' decision and remand this case to the Court of Appeals for consideration of defendant's remaining challenges to the trial court's judgment.

II. Legal Analysis

A. Relevant Factual Information

1. Wrongful Death Action

At the second trial, the State was allowed to introduce evidence concerning a civil action that had been filed against defendant. On 29 October 2008, Linda Fisher, acting in her capacity as the executrix of Ms. Young's estate, filed a complaint seeking a damage recovery from defendant for wrongful death and a declaration that defendant was disqualified from receiving any monetary benefit as the result of Ms. Young's death pursuant to the provisions of Chapter 31A of the General Statutes. After defendant failed to file an answer or other responsive pleading, the estate sought the entry of default judgments against defendant. The estate's motion for the entry of a default judgment in the declaratory judgment action was heard before the trial court on 5 December 2008, at which point the trial court reviewed the record and certain affidavits that had been submitted in support of the estate's request for a declaratory judgment and entered a judgment determining that defendant had "unlawfully killed" Ms. Young, and was a "slayer" as that term is used in N.C.G.S. § 31A-3(3)d. Subsequently, Judge W. Osmond Smith, III, entered a default judgment in the wrongful death action awarding damages in excess of fifteen million dollars to Ms. Young's estate.

At trial, the State called Lorrin Freeman, who served as Clerk of Superior Court for Wake County at that time, for the purpose of testifying concerning the wrongful death and declaratory judgment action.[7] At that point, defendant's trial counsel objected "to the entire line of questioning about the wrongful death case." Defense counsel added: "And we would cite basically Rule 403, that we believe that to the extent [that it's] probative of anything that the danger of confusing, misleading, undue prejudice to the defendant substantially outweighs the probative value, and don't wish to be heard further." In response, the trial court ruled that the fact that a wrongful death and declaratory judgment action had been filed and that defendant, the primary beneficiary under Ms. Young's policy of life insurance,

> elected to be defaulted and in response to the wrongful death action and permitted by law for the Court to enter

7. At the time that the State made reference to evidence concerning the wrongful death and declaratory judgment action in its opening statement, defendant's trial counsel objected to the prosecutor's argument. After initially sustaining defendant's objection, the trial court allowed the prosecutor to argue that defendant "allowed a civil judgment to be entered against him."

> a judgment disqualifying him from benefiting from the death of Michelle Young may be a factor, that is, might be relevant to any number of matters that the jury has already heard and will hear and are considering, and so I do believe it's relevant and I do believe that the probative value outweighs any prejudicial effect.

After making this ruling, the trial court indicated that it would instruct the jury about "the law relating to a civil action and a civil judgment," "the obligation of the defendant named to answer," and the law allowing entry of a default judgment in the event that a defendant failed to file an answer or other responsive pleading.

After the prosecutor asked Ms. Freeman whether a civil action had been filed against defendant by Linda Fisher on behalf of Ms. Young's estate, defendant lodged another objection. After overruling the objection, the trial court outlined the procedures utilized in civil actions, advised the jury that judgment could be entered in the plaintiff's favor in the event that the defendant failed to respond to the plaintiff's complaint, explained to the jury that allegations made in a civil complaint are deemed to have been admitted when no responsive pleading is filed "whether actually true or not," and instructed the jury that the entry of a "civil judgment is not a determination of guilt by any court that the named defendant has committed any criminal offense." Following the delivery of these instructions, which the trial court indicated would be supplemented at the conclusion of the trial, Ms. Freeman explained the nature of a wrongful death action and an action pursuant to N.C.G.S. § 31A-3(3)d; read the allegation contained in the complaint to the effect that, "[i]n the early morning hours of November 3rd, 2006 Jason Young brutally murdered Michelle Young at their residence"; reported that defendant never filed an answer or other responsive pleading in the wrongful death and declaratory judgment action; stated that a hearing at which Ms. Young's estate intended to seek the entry of a default judgment in the declaratory judgment action pursuant to N.C.G.S. § 31A-3(3)d was noticed for 5 December 2008; confirmed that this notice of hearing had been served on defendant and Roger Smith, Jr., an attorney with whom defendant had consulted during the investigation of Ms. Young's death; indicated that various items of evidence were presented for the trial court's consideration; and, over a renewed objection, testified that the trial court had entered a default judgment in the declaratory judgment action finding that defendant had "unlawfully killed [Ms. Young] . . . within the definition of [s]layer in the civil law." At a later time, Ms. Freeman testified, Judge Smith entered a default judgment in the

wrongful death action in which he awarded Ms. Young's estate "[o]ver $15 million."[8]

On cross-examination, Ms. Freeman testified that the attorneys representing Ms. Young's estate in the wrongful death and declaratory judgment action filed affidavits in support of the estate's motion for the entry of a default judgment, described the items that those attorneys examined during their investigation into the validity of the claims that the estate had asserted against defendant, and stated the amount of money that the estate and its attorneys had obtained as a result of the entry of these default judgments. On redirect examination, Ms. Freeman testified that an autopsy report concerning the cause of Ms. Young's death was contained in the file relating to the wrongful death and declaratory judgment action and that the affidavit executed by one of the attorneys who represented Ms. Young's estate in those proceedings had asserted that, "in his opinion . . . [defendant] brutally murdered [Ms.] Young at their residence."

At the conclusion of the trial, the trial court delivered additional instructions to the jury concerning the manner in which they should consider the evidence that they had heard concerning the wrongful death and declaratory judgment action. More specifically, the trial court instructed the jury that:

> I further instruct you there is evidence that tends to show that a civil complaint was filed in the Civil Superior Court of Wake County against the defendant by Linda Fisher on behalf of the Estate of Michelle Young and that a civil summons was issued by the clerk of the court commanding the defendant to answer or otherwise respond to the allegations of that civil complaint within the time required by law. There is further evidence that tends to show that the defendant was timely served with these documents and that he did not file an answer or otherwise respond to the complaint and that a default judgment was entered against him by reason of that failure.
>
> As I previously instructed you, when a defendant in a civil action has been properly served with the civil

8. Similarly, Michael Schilawski, who represented Linda Fisher and Meredith Fisher in the child custody action, testified, without objection, that the trial court stated in its declaratory ruling judgment that defendant "quote, [w]illfully and unlawfully killed, unquote, [Ms. Young], and as a result of that judgment the defendant is barred from collecting any insurance proceeds payable on [Ms. Young's] life or from inheriting any property from [Ms. Young's] estate."

> summons and the civil complaint and fails to timely respond, upon motion of the plaintiff the Court is authorized to enter a civil judgment against the defaulting defendant. For purpose of the civil law, the allegations of the complaint which have not been denied, whether actually true or not, are deemed to be admitted for the purpose of allowing the plaintiff to have a civil judgment entered against the defendant. The burden of proof in a civil case requires only that the plaintiff satisfy the Court or the jury by the greater weight of the evidence that the plaintiff's claims are valid. This means that the plaintiff must prove that the facts are more likely than not to exist in the plaintiff's favor. When there is a default, that burden of proof is deemed in law to be met.
>
> The entry of a civil default judgment is not a determination of guilt by the Court that the named defendant has committed any criminal offense.

Neither party lodged any objection to this portion of the trial court's instructions to the jury concerning the evidence relating to the wrongful death and declaratory judgment action.

2. Child Custody Action

On 17 December 2008, Linda Fisher and Meredith Fisher filed a complaint seeking the entry of an order awarding them custody of Emily after defendant had denied their requests for access to his daughter. In their complaint, Linda Fisher and Meredith Fisher alleged that defendant had "brutally murdered" Ms. Young and that, "[u]pon information and belief, [Emily] was in the residence at the time [defendant] murdered her mother." In their prayer for relief, Linda Fisher and Meredith Fisher requested that defendant be subject to discovery and submit to a psychological evaluation. After the filing of this custody action, defendant entered into a consent judgment with Linda Fisher and Meredith Fisher pursuant to which the parties agreed that Meredith Fisher would have primary physical custody of Emily and that no discovery or psychological examination of defendant would be conducted.

The child custody action initially came to the jury's attention during the cross-examination of Meredith Fisher, when defendant's trial counsel asked her about the filing of the child custody complaint and the request that defendant be subject to a psychological examination. After the State, without objection, sought and obtained the admission of the child custody complaint into evidence, Mr. Schilawski testified, also

without objection, that Linda Fisher and Meredith Fisher had alleged in the child custody complaint that, "[i]n the early morning hours of November 3rd, 2006 the defendant brutally murdered [Ms. Young] at their residence" at a time when Ms. Young "was pregnant with defendant's son" and, upon information and belief, when Emily "was in the residence." After defendant filed a motion seeking a change of venue, the parties entered into negotiations resulting in the entry of a consent judgment under which "primary physical custody was awarded to Meredith Fisher" after the completion of a transitional process, the parties "waive[d] the right to conduct discovery with respect to each other," and defendant was absolved from any responsibility for submitting to a psychological evaluation.

B. Admissibility of the Challenged Evidence

The Court of Appeals held that the trial court erred by allowing the admission of evidence concerning the wrongful death and declaratory judgment complaint and default judgments and the child custody complaint on the grounds that the trial court's decision contravened N.C.G.S. § 1-149 and N.C.G.S. § 8C-1, Rule 403. We do not, however, believe that defendant properly preserved his challenge to the admission of any of the challenged evidence on the basis of N.C.G.S. § 1-149 for purposes of appellate review. In addition, we do not believe that defendant properly preserved his challenge to the admission of evidence concerning the child custody complaint for purposes of appellate review on any grounds. Finally, we conclude that defendant's challenge to the admission of evidence concerning the wrongful death and declaratory judgment complaint and judgments as violative of N.C.G.S. § 8C-1, Rule 403 lacks merit. As a result, the Court of Appeals' decision must be reversed and this case remanded to the Court of Appeals for consideration of defendant's remaining challenges to the trial court's judgment.

1. N.C.G.S. § 1-149

[1] In seeking relief from the Court of Appeals' decision, the State contends that the Court of Appeals erred by determining that defendant was entitled to a new trial on the grounds that the admission of evidence concerning the wrongful death and declaratory judgment action and the child custody action violated N.C.G.S. § 1-149. Among other things, the State contends that defendant failed to properly preserve his challenge to the admission of this evidence for purposes of appellate review on the grounds that, as defendant appears to acknowledge, no objection to the admission of the challenged evidence as violative of N.C.G.S. § 1-149 was asserted in the trial court. As a result, the first issue that we

must address is the extent, if any, to which defendant's failure to object to the admission of the challenged evidence in reliance upon N.C.G.S. § 1-149 in the court below precludes us from reaching the merits of defendant's claim. N.C. R. App. P. 10(a)(1) ("In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context" and "obtain[ed] a ruling upon the party's request, objection, or motion.").

N.C.G.S. § 1-149 provides, in pertinent part, that "[n]o pleading can be used in a criminal prosecution against the party as proof of a fact admitted or alleged in it." N.C.G.S. § 1-149 (2013). Although the literal language of N.C.G.S. § 1-149 relates solely to the contents of pleadings, this Court has reviewed the admissibility of any evidence relating to civil pleadings or judgments utilizing the standard set out in N.C.G.S. § 1-149 rather than limiting the applicability of N.C.G.S. § 1-149 to the contents of such documents. *See State v. Wilson*, 217 N.C. 123, 126-27, 7 S.E.2d 11, 12-13 (1940) (excluding evidence concerning both a pleading and an order in a civil case); *State v. Dula*, 204 N.C. 535, 536-37, 168 S.E. 836, 836-37 (1933) (excluding evidence concerning the contents of a civil pleading and a civil judgment). As a result, N.C.G.S. § 1-149 requires the exclusion of any evidence relating to the allegations and determinations made in the course of civil litigation "as proof of a fact admitted or alleged in it." N.C.G.S. § 1-149.

According to the Court of Appeals, the fact that defendant did not object to the admission of evidence concerning the complaint filed and default judgments entered in the wrongful death and declaratory judgment action and the complaint filed in the child custody action on the basis of N.C.G.S. § 1-149 at trial does not preclude consideration of defendant's challenge to the admission of this evidence as violative of N.C.G.S. § 1-149 on the merits despite the absence of a contemporaneous objection in the trial court given that the admission of the challenged evidence involved judicial "act[ion] contrary to a statutory mandate." *State v. Ashe*, 314 N.C. 28, 39, 331 S.E.2d 652, 659 (1985); *see also State v. McCall*, 289 N.C. 570, 576, 223 S.E.2d 334, 337 (1976) (stating that "[w]hen . . . evidence rendered incompetent by statute was admitted, it became the duty of the trial judge to exclude the testimony, and his failure to do so must be held reversible error whether exception was noted or not" (quoting *State v. Porter*, 272 N.C. 463, 468, 158 S.E.2d 626, 630 (1968))). After careful consideration, however, we hold that the legal principle upon which the Court of Appeals relied in reaching the merits

of the claim that defendant has asserted on the basis of N.C.G.S. § 1-149 does not apply in this instance.

As an initial matter, we note that the extent to which the admission of evidence related to civil actions in criminal proceedings is subject to appellate review despite the failure of the defendant to object under N.C.G.S. § 1-149 was addressed by this Court, albeit in dictum, in *State v. Stephenson*, 218 N.C. 258, 10 S.E.2d 819 (1940). In *Stephenson*, the defendant was convicted of insurance fraud after he burned his tobacco packhouse for the purpose of collecting insurance proceeds. *Id.* at 259, 262, 10 S.E.2d at 820, 822. The State, without objection, introduced the verified complaint that the defendant had filed against his insurance company for the purpose of obtaining a recovery under his fire insurance policy. *Id.* at 261, 10 S.E.2d at 821. After hearing closing arguments and receiving the trial court's instructions, the jury took the verified complaint to the jury room for use during its deliberations. *Id.* at 262-63, 10 S.E.2d at 822. On appeal, the defendant challenged the jury's use of the complaint during its deliberations without raising any objection based upon the fact that the document in question had been admitted into evidence. *Id.* at 263, 10 S.E.2d at 822. After quoting from what is now N.C.G.S. § 1-149, this Court stated that, "[t]hough the complaint was admitted in evidence, without objection, *which amounted to waiver of objection thereto*, it was not permissible for the jury to take it into the jury room without the consent of defendant or of his counsel." *Id.* at 265, 10 S.E.2d at 824 (emphasis added) (internal citations omitted). As a result, this Court has clearly indicated that a failure to object to the admission of evidence that allegedly violates N.C.G.S. § 1-149 results in a waiver of the right to challenge the admission of that evidence on appeal.

A careful comparison of the statutory provisions that this Court has treated as "mandatory" with the language contained in N.C.G.S. § 1-149 establishes that our dictum in *Stephenson* reflected a correct understanding of the applicable law. For example, the statutory provision held to be mandatory in *Ashe* provided that, "[i]f the jury, after retiring for deliberation requests a review of certain testimony or other evidence, *the jurors must be conducted to the courtroom*," at which point "[t]he judge *in his discretion*, after notice to the prosecutor and defendant, may direct that requested parts of the testimony be read to the jury and may permit the jury to reexamine in open court the requested materials admitted into evidence." 314 N.C. at 33-34, 331 S.E.2d at 656 (quoting N.C.G.S. § 15A-1233(a) (emphases added)). Similar language appears in other statutory provisions that this Court has treated as "mandatory." *See, e.g.*, *State v. Davis*, 364 N.C. 297, 302, 698 S.E.2d 65, 68 (2010) ("*Unless*

the conduct is covered under some other provision of law providing greater punishment, the following classifications apply to the offenses set forth in this section: . . . (2) Felony death by vehicle is a Class E felony. . . . (4) Felony serious injury by vehicle is a Class F felony." (quoting N.C.G.S. § 20-141.4(b) (2009) (emphasis added))); *State v. Young*, 324 N.C. 489, 494, 380 S.E.2d 94, 97 (1989) (citing N.C.G.S. § 15A-1222 ("The judge *may not express* during any stage of the trial, any opinion in the presence of the jury on any question of fact to be decided by the jury." (emphasis added)), and *id.* § 15A-1232 ("In instructing the jury, the judge *shall not express* an opinion as to whether or not a fact has been proved . . . ." (emphasis added))); *McCall*, 289 N.C. at 575, 223 S.E.2d at 337 (stating that N.C.G.S. § 8-57 provided that "defendant's wife was not a competent witness to testify against him, and her failure to testify for him could not be used to his prejudice"). As a result, the statutory provisions that this Court has treated as "mandatory" either include language that requires the trial court to act in a very specific manner or renders certain types of evidence inadmissible for any purpose whatsoever.

The language contained in N.C.G.S. § 1-149 cannot be deemed "mandatory" as that term is used in *Ashe* and similar cases. As a result, N.C.G.S. § 1-149 does not render civil pleadings and judgments invariably inadmissible as a matter of law in every criminal case in the same way that compelled spousal testimony concerning areas outside the statutorily specified exceptions is rendered inadmissible by the current version of N.C.G.S. § 8-57. On the contrary, a trial court required to evaluate the validity of an objection lodged in reliance upon N.C.G.S. § 1-149 must determine whether there is a permissible purpose for which the evidence in question can be admitted, with the ultimate issue being whether the evidence is relevant for some purpose other than proving the same facts found, admitted, or alleged in the civil proceeding in question.

The necessity for the trial court to conduct such an inquiry is repeatedly noted in this Court's jurisprudence concerning N.C.G.S. § 1-149. On the one hand, this Court has precluded the admission of evidence concerning the allegations and admissions contained in civil pleadings. In *Dula*, in which the defendant was charged with embezzling monies that he had collected from the sale of thirteen pianos, 204 N.C. at 535, 168 S.E. at 836, the State offered into evidence the complaint, answer, verdict, and judgment from a civil action in which the piano company had successfully sued the defendant under a consignment contract for the purpose of recovering the amount that the defendant had collected for selling the pianos in question, *id.* at 536, 168 S.E. at 836. As we noted in our opinion, the State offered this evidence for the purpose of showing

that the defendant had received the pianos and sold them without delivering the sales proceeds to the company from which he had procured them, a set of facts that provided the basis for the embezzlement charge that had been lodged against the defendant. *Id.* at 536, 168 S.E. at 836. Although the evidence in question was admitted in the trial court, we overturned the defendant's conviction on the grounds that the evidence concerning the civil filings and orders had been unlawfully admitted during the criminal trial for the purpose of proving the same facts that were alleged or admitted in the related civil matter. *Id.* at 536, 168 S.E. at 836-37. Similarly, we held in *Wilson* that evidence concerning the contents of certain civil pleadings was not admissible at the defendant's embezzlement trial given that the challenged evidence was offered for the purpose of proving that, as guardian of an estate, the defendant had improperly made loans to himself and mismanaged funds. 217 N.C. at 126-27, 7 S.E.2d at 13. As a result, our decisions construing N.C.G.S. § 1-149 clearly prohibit the admission of civil pleadings or judgments for the purpose of proving the facts alleged, admitted, or found in those documents.

On the other hand, in *State v. McNair*, 226 N.C. 462, 38 S.E.2d 514 (1946), we recognized that a party's decision to seek the admission of a civil judgment in a criminal case does "not necessarily use the pleading as proof of any fact therein alleged," *id.* at 464, 38 S.E.2d at 516, and stated that the admissibility of a civil pleading in a criminal trial hinges on the purpose for which the challenged evidence is offered, *id.* at 463-64, 38 S.E.2d at 516. In upholding the trial court's decision to permit the prosecutor to cross-examine the defendant concerning a civil suit in which the defendant had claimed to be the owner of a vehicle that he was alleged to have stolen, this Court stated that:

> The solicitor announced that the object of the cross-examination relative to the complaint in the civil action, was "to impeach the witness or to contradict him," and not to prove any of the facts alleged therein, as they were at variance with the theory of the State's case. The purpose of the solicitor was to use the allegations of the complaint in the civil action, not "as proof of a fact admitted or alleged in it," but to show that the defendant had made two contradictory statements about the matter, neither of which was correct.

Id. at 463-64, 38 S.E.2d at 516. Similarly, in *State v. Phillips*, 227 N.C. 277, 279, 41 S.E.2d 766, 767 (1947), we held that evidence concerning an annulment action brought against the defendant by his second wife, which had been offered for the purpose of proving that he had a motive

to kill his first wife rather than to prove that he was a party to a bigamous marriage, was properly admitted. Thus, this Court has clearly allowed the admission of evidence concerning the contents of criminal pleadings for purposes other than showing the truth of the allegations and admissions contained in those documents.

As a result, given the fact that N.C.G.S. § 1-149 does not contain any mandatory language and given that the prior decisions of this Court do not treat evidence concerning the allegations, admissions, and findings contained in civil pleadings and judgments as invariably inadmissible in criminal cases, we hold that N.C.G.S. § 1-149 is not a "mandatory" statute the violation of which is cognizable on appeal despite the absence of an objection in the trial court. The same logic upon which the Court of Appeals relied in reaching a contrary result would necessarily result in treating most of the provisions of the North Carolina Rules of Evidence as "mandatory," a result that would be contrary to the manner in which this Court has treated evidentiary arguments that were not supported by an objection lodged at trial for most of its history. As a result, since defendant did not object to the admission of evidence concerning the wrongful death and declaratory judgment complaint and default judgments on the basis of N.C.G.S. § 1-149, he is not entitled to challenge the admission of this evidence as violative of that statutory provision on appeal. The same is true of his challenge to the admission of evidence concerning the child custody complaint. The Court of Appeals erred in reaching a contrary conclusion.[9]

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9. After awarding defendant a new trial, the Court of Appeals dismissed defendant's pending motion for appropriate relief as moot. After this Court granted the State's discretionary review petition and assumed jurisdiction over this case, defendant filed a motion for appropriate relief with this Court in which he has asked us to consider his ineffective assistance of counsel claim on the merits in the event that we were to reverse the decision of the Court of Appeals. In addition, the State has also effectively requested us to consider defendant's ineffective assistance of counsel claim on the merits by addressing and deciding the issue of whether evidence related to the civil actions was admitted for an improper purpose under N.C.G.S. § 1-149 even if we find that defendant failed to properly preserve that issue for purposes of appellate review. We decline the parties' invitation to directly or indirectly address defendant's claim for ineffective assistance of counsel at this time. As we have noted elsewhere in this opinion, the effect of our decision to reverse the Court of Appeals' decision in this case is to resuscitate the motion for appropriate relief that defendant filed in that court, a development that renders it unnecessary for us to address and decide the issues that defendant has sought to raise in the essentially identical motion for appropriate relief that he has filed with this Court. Having discussed how N.C.G.S. § 1-149 should be construed in the course of deciding whether defendant had properly preserved the claim that he has advanced in reliance upon that statute for purposes of appellate review, we believe that we have given the lower courts sufficient guidance concerning the manner in which any remaining issues relating to N.C.G.S. § 1-149 should be decided. As a result, we decline to further address the merits of the claim that defendant

2. N.C.G.S. § 8C-1, Rule 403

[2] Secondly, the State contends that the Court of Appeals erred by holding that the trial court abused its discretion in overruling defendant's objection to exclude evidence of the civil suits under N.C.G.S. § 8C-1, Rule 403.[10] According to the State, the Court of Appeals misapplied the applicable standard of review by essentially reweighing the factors that supported and militated against the admission of the challenged evidence rather than determining whether the trial court's decision to admit the challenged evidence lacked any reasoned basis. Once again, we find the State's argument persuasive.[11]

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." N.C.G.S. § 8C-1, Rule 403 (2013). "This determination is within the sound discretion of the trial court, and the trial court's ruling should not be overturned on appeal unless the ruling was 'manifestly unsupported by reason or [was] so arbitrary that it could not have been the result of a

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has advanced in reliance upon N.C.G.S. § 1-149 at this time and dismiss the motion for appropriate relief that defendant has filed with this Court without prejudice to his right to pursue the similar motion for appropriate relief that will be before the Court of Appeals on remand.

10. In his brief, defendant points out that, in addition to explicitly objecting to the admission of evidence concerning his response to the wrongful death and declaratory judgment action pursuant to N.C.G.S. § 8C-1, Rule 403, he also lodged one or more objections for which no grounds were stated at one point during Ms. Freeman's testimony. Based upon that fact, defendant appears to suggest that he is entitled to challenge the admission of the evidence in question on relevance and hearsay grounds as well as on the basis of N.C.G.S. § 8C-1, Rule 403. However, given that a "general objection, if overruled is no good, unless on the face of the evidence, there is no purpose whatever for which it could have been admissible," *State v. Ward*, 301 N.C. 469, 477, 272 S.E.2d 84, 89 (1980) (quoting 1 *Stansbury's North Carolina Evidence* § 27, at 72 (Brandis rev. 1973)), and given that the challenged evidence, as is explained in more detail below, is not inadmissible for all purposes, defendant's relevance and hearsay arguments are not properly before us.

11. As an aside, we note that, despite the Court of Appeals' determination that the admission of evidence concerning both of the civil actions discussed in the text of this opinion violated N.C.G.S. § 8C-1, Rule 403, defendant never actually objected to admission of evidence of the child custody complaint and consent judgment on any grounds at trial. In view of that fact, the Court of Appeals lacked the authority to consider the validity of defendant's challenge to the admission of evidence concerning the child custody proceeding under N.C.G.S. § 8C-1, Rule 403, on the merits. As a result, the only issue that is properly before us under N.C.G.S. § 8C-1, Rule 403, is the extent to which the trial court erred by allowing the admission of evidence relating to defendant's response to the wrongful death and declaratory judgment action.

reasoned decision.' " *State v. Hyde*, 352 N.C. 37, 55, 530 S.E.2d 281, 293 (2000) (alteration in original) (quoting *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988)), *cert. denied*, 531 U.S. 1114, 121 S. Ct. 862, 148 L. Ed. 2d 775 (2001). Thus, the ultimate issue raised by defendant's challenge to the admission of evidence concerning his response to the wrongful death and declaratory judgment action is whether the trial court's decision to allow the admission of the challenged evidence was so arbitrary that it could not have resulted from the making of a reasoned decision.

The Court of Appeals held that the trial court abused its discretion by allowing the admission of the challenged evidence for two basic reasons. *Young*, __ N.C. App. at __, 756 S.E.2d at 783. As an initial matter, the Court of Appeals held that the substantial prejudice resulting from the introduction of this evidence "irreparably diminished" defendant's presumption of innocence and "vastly outweighed [its] probative value." *Id.* at __, 756 S.E.2d at 783. We do not find this logic convincing.

As a general proposition, appellate decisions holding that a trial court erroneously failed to sustain an objection lodged pursuant to N.C.G.S. § 8C-1, Rule 403, tend to rest on determinations that the admission of the evidence in question served little or no purpose other than to inflame the passions of the jury. *See*, *e.g.*, *Hennis*, 323 N.C. at 283, 286-87, 372 S.E.2d at 526, 531 (finding prejudicial error in a trial court decision to allow the admission of thirty-five gruesome photographs depicting the decayed bodies of murder victims displayed on a screen positioned immediately over the defendant's head and distributed one at a time to the jury over the course of an hour); *State v. Kimbrell*, 320 N.C. 762, 768-69, 360 S.E.2d 691, 694-95 (1987) (holding that the trial court committed prejudicial error by admitting evidence that the defendant engaged in "devil worship" because the evidence "had little or no probative value and can only have been [used] to arouse the passion and prejudice of the jury"). For that reason, one of the ultimate questions raised by the argument that defendant has advanced in reliance upon N.C.G.S. § 8C-1, Rule 403, in challenging the trial court's decision to admit evidence concerning the complaint filed and default judgments entered in the wrongful death and declaratory judgment action is whether the evidence in question had any significant probative value or, alternatively, whether the sole effect of the challenged evidence was to unfairly prejudice the defendant in the eyes of the jury.

A careful review of the record demonstrates that the evidence relating to the wrongful death and declaratory judgment action had at least some material probative value for the purpose of challenging the validity

of defendant's alibi defense. Evidence has "probative value" if it "tends to prove or disprove a point in issue." *Probative Evidence*, *Black's Law Dictionary* (8th ed. 2004). As a result, the extent to which evidence does or does not have probative value depends upon the extent to which a reasonable mind would be more or less influenced by the introduction of the evidence in question in determining whether a disputed fact did or did not exist.

This Court has repeatedly upheld the admission of evidence concerning a defendant's actions after the commission of a crime on the theory that such evidence was relevant to the issue of whether the defendant committed the crime in question. *See State v. McDougald*, 336 N.C. 451, 457, 444 S.E.2d 211, 215 (1994) (finding that the probative value of evidence to the effect that the defendant had escaped from jail before trial was not substantially outweighed by the danger of unfair prejudice on the grounds that the challenged evidence "tended to show the defendant's consciousness of his guilt"); *State v. Stager*, 329 N.C. 278, 321-22, 406 S.E.2d 876, 900-01 (1991) (upholding the admission of evidence to the effect that, among other things, the defendant exhibited a calm demeanor on the morning of her husband's death and that the defendant had disposed of some of her husband's personal effects the day after his funeral). In other words, there is no blanket rule prohibiting the admission of evidence concerning a defendant's conduct after the commission of a crime as long as that evidence has a tendency to shed light on the issue of whether the defendant committed the crime for which he is standing trial. As a result, in order to evaluate the validity of defendant's argument in reliance upon N.C.G.S. § 8C-1, Rule 403, we need not do any more than determine whether that evidence had probative value without being overly concerned about the temporal relationship between the events described in the evidence in question and the date upon which the crime charged was allegedly committed.[12]

The strategy employed by the State in defendant's second trial included an attempt to demonstrate that the alibi evidence that defendant presented at the first trial was false. As part of that process, the

12. The extent to which evidence has probative value and the extent to which evidence may be admitted for a particular purpose are two different, albeit related, questions. As a result, even if, as defendant vigorously contends, the State intended for the jury to draw an inference that is forbidden by N.C.G.S. § 1-149 based upon the introduction of evidence concerning defendant's response to the wrongful death and declaratory judgment action, the proper manner in which to address that problem would have been for defendant to have lodged an appropriate objection and to either obtain a favorable ruling with respect to that issue or to properly preserve that issue for purposes of appellate review.

State attempted to demonstrate that defendant had attempted to "sandbag" the prosecution by waiting until after he had heard the State's evidence before offering up his own version of what had happened, thereby gaining for himself the opportunity to provide an explanation for all of the incriminating evidence that the State had amassed against him. The admission of evidence that, at a substantial economic cost, defendant allowed the entry of a default judgment against himself in the wrongful death and declaratory judgment action rather than offering up a defense and subjecting his account of the events of 2 and 3 November 2006 to scrutiny by others, including agents of the State, in that proceeding did tend to bolster the validity of the State's attack upon the credibility of defendant's alibi. As a result, we are unable to say that the evidence concerning defendant's response to the wrongful death and declaratory judgment action that the trial court admitted at defendant's second trial had no probative value in light of the fact that the credibility of a defendant's account of what happened is always of significant interest to jurors.[13]

We recognize that the admission of evidence that defendant failed to respond to the allegations advanced against him in the wrongful death and declaratory judgment action posed a significant risk of unfair prejudice to defendant. This risk of unfair prejudice was heightened by the fact that the trial court had heard the estate's motion for the entry of a default judgment in the declaratory judgment action and found that defendant had "unlawfully" killed Ms. Young. In recognition of this risk, the trial court explicitly instructed the jury concerning the manner in which civil cases are heard and decided, the effect that a failure to respond has on the civil plaintiff's ability to obtain the requested relief, and the fact that "[t]he entry of a civil judgment is not a determination of guilt by any court that the named defendant has committed any criminal offense."[14] As a result of the fact that the jury is presumed to have

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13. The fact that the State advanced a similar argument at the first trial without attempting to introduce the challenged evidence has no bearing on the extent to which the State was entitled to take a different tack on retrial.

14. Although the trial court did not, as defendant notes, instruct the jury that the evidence concerning the wrongful death and declaratory judgment action was admitted for the sole purpose of attacking the credibility of defendant's claim of alibi, "[t]he admission of evidence, competent for a restricted purpose, will not be held error in the absence of a request by defendant for a limiting instruction." *State v. Chandler*, 324 N.C. 172, 182, 376 S.E.2d 728, 735 (1989) (citation omitted). As a result of the fact that defendant's trial counsel never requested the trial court to instruct the jury concerning the purposes for which the jury was entitled to consider the evidence concerning the wrongful death and declaratory judgment action or objected to the instructions that the trial court, acting *ex mero*

followed the trial court's instructions, *State v. Tirado*, 358 N.C. 551, 581, 599 S.E.2d 515, 535 (2004) (citation omitted), *cert. denied*. 544 U.S. 909, 125 S. Ct. 1600, 161 L. Ed. 2d 285 (2005), the record reflects that the trial court took action that is presumed to have been effective to protect defendant against the exact harm about which he expresses concern.

Although the members of this Court might well have reached a different result from the trial court after balancing the probative value of the evidence concerning defendant's failure to respond to the wrongful death and declaratory judgment action against the risk of unfair prejudice associated with the admission of that evidence, the applicable standard of review requires us to simply determine whether the trial court could have made a reasoned decision to allow the admission of the evidence in question. *State v. Locklear*, 363 N.C. 438, 449, 681 S.E.2d 293, 302-03 (2009) (stating that, "[i]n our review, we consider not whether we might disagree" with the trial court but whether "the trial court's actions are fairly supported by the record" (quoting *State v. Whaley*, 362 N.C. 156, 160, 655 S.E.2d 388, 390 (2008))). In view of the fact that the evidence concerning defendant's response to the wrongful death and declaratory judgment action had material probative value and the fact that the trial court recognized and made a serious attempt to address the risk of unfair prejudice that would inevitably flow from the admission of that evidence, we cannot conclude that the trial court erred in determining that the risk of unfair prejudice resulting from the introduction of the challenged evidence did not substantially outweigh its probative value.

In awarding defendant a new trial, the Court of Appeals relied upon this Court's decision in *State v. Scott*, 331 N.C. 39, 43, 413 S.E.2d 787, 789 (1992), for the proposition that, "[w]hen the intrinsic nature of the evidence itself is such that its probative value is always necessarily outweighed by the danger of unfair prejudice, the evidence becomes inadmissible under [Rule 403] as a matter of law." *Young*, __ N.C. App. at __, 756 S.E.2d at 783 (second alteration in original) (quoting *Scott*, 331 N.C. at 43, 413 S.E.2d at 789). In *Scott*, this Court concluded that the admission of evidence of a prior alleged offense for which the defendant "had been tried and acquitted" in an earlier trial constituted an abuse of discretion "as a matter of law" on the grounds that the probative value of the evidence in question depended on the extent to which the defendant

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motu, decided to deliver concerning that subject, defendant is not entitled to complain that the prejudicial effect of the challenged evidence was compounded by the trial court's failure to instruct the jury concerning the purposes for which the challenged evidence could properly be considered.

had actually committed the prior alleged offense and that the fact that he had been found not guilty of having committed that offense deprived the evidence in question of any probative value, 331 N.C. at 42, 413 S.E.2d at 788, on the theory that the defendant's acquittal meant that he "has been 'set free or judicially discharged from an accusation; released from . . . a charge or suspicion of guilt,' " *id.* at 43, 413 S.E.2d at 789 (quoting *State v. Marley*, 321 N.C. 415, 424, 364 S.E.2d 133, 138 (1988) (alterations in original)). The probative value of the evidence at issue in this case, unlike that of the evidence at issue in *Scott*, was not undercut by the existence of a prior judicial determination that the accusation lodged against the defendant in the related matter had no merit. As a result, the Court of Appeals' reliance upon *Scott* was misplaced.

The second justification advanced by the Court of Appeals in support of its decision to hold that the trial court had abused its discretion by allowing the admission of evidence concerning defendant's response to the wrongful death and declaratory judgment action was that the trial court admitted the challenged evidence while subject to a misapprehension of law. *Young*, __ N.C. App. at __, 756 S.E.2d at 783. According to well-established North Carolina law, "[w]here a ruling is based upon a misapprehension of the applicable law, the cause will be remanded in order that the matter may be considered in its true legal light." *Nationwide Mut. Ins. Co. v. Chantos*, 298 N.C. 246, 252, 258 S.E.2d 334, 338 (1979) (citation omitted). In support of this determination, the Court of Appeals held that the trial court had an obligation, even in the absence of an objection, to conduct an inquiry for the purpose of determining whether the admission of the challenged evidence would violate N.C.G.S. § 1-149 and had failed to do so. *Young*, __ N.C. App. at __, 756 S.E.2d at 783. As we have already noted, however, N.C.G.S. § 1-149 does not require the trial court to act in the absence of an objection from one or the other party. In view of the fact that neither party to this case directed the trial court's attention to N.C.G.S. § 1-149 at the time that the challenged evidence was admitted, the trial court was not obligated to consider the potential applicability of N.C.G.S. § 1-149 at the risk of being reversed on appeal in the absence of a showing of plain error.[15] As a result, given that the Court of Appeals erred by holding that the trial court violated N.C.G.S. § 8C-1, Rule 403, by admitting evidence concerning defendant's response to the wrongful death and declaratory

15. Although defendant alludes at one point in his brief to the possibility that the admission of the challenged evidence constituted plain error, the Court of Appeals did not decide this case on plain error grounds and defendant has failed to advance any detailed "plain error"-based argument in his brief before this Court.

judgment action, defendant is not entitled to relief from the trial court's judgment on the basis of the admission of that evidence.

III. Conclusion

Thus, for the reasons set forth above, we conclude that the Court of Appeals erred by awarding defendant a new trial based upon the admission of evidence concerning defendant's response to the wrongful death and declaratory judgment action and the child custody action that were filed against him by members of Ms. Young's family.[16] As a result, the Court of Appeals' decision should be, and hereby is, reversed, and this case should be, and hereby is, remanded to the Court of Appeals for consideration of defendant's remaining challenges to the trial court's judgment, including the issues raised by the motion for appropriate relief that defendant filed before the Court of Appeals.

REVERSED AND REMANDED.

STATE OF NORTH CAROLINA ex rel. UTILITIES COMMISSION; AQUA NORTH CAROLINA, INC., Applicant; and PUBLIC STAFF – NORTH CAROLINA UTILITIES COMMISSION, Intervenor

v.

ATTORNEY GENERAL ROY COOPER, Intervenor

No. 347A14

Filed 21 August 2015

Utilities—rate adjustment mechanism—infrastructure—water and sewer service

The Utilities Commission provided sufficient findings, reasoning, and conclusions to support its ultimate finding that Aqua N.C., Inc.'s use of the rate adjustment mechanism in N.C.G.S. § 62-133.12 was in the public interest, and the Commission's determination was supported by substantial evidence in view of the whole record. The Commission initially found that the legislative intent behind section 62-133.12 was to provide a mechanism to incentivize quicker investments in water and sewer infrastructure by allowing for faster recovery of some portion of invested costs, then thoroughly

16. The remaining issues addressed by the Court of Appeals are not before this Court, so the Court of Appeals' decision with respect to these issues remains undisturbed.

explained how Aqua's use of the rate adjustment mechanism would benefit Aqua's customers. Moreover, the Commission took meaningful steps to ensure that problems with water quality were addressed and that customers were charged only after Aqua has made improvements to the quality and reliability of its service.

On direct appeal as of right pursuant to N.C.G.S. §§ 7A-29(b) and 62-90(d) from a final order of the North Carolina Utilities Commission entered on 2 May 2014 in Docket No. W-218, Sub 363. Heard in the Supreme Court on 16 March 2015.

Sanford Law Office, PLLC, by Jo Anne Sanford; Bennink Law Office, by Robert H. Bennink, Jr.; Law Office of Charlotte Mitchell, by Charlotte Mitchell; and Allegra Collins Law, by Allegra Collins, for applicant-appellee Aqua North Carolina, Inc.

Antoinette R. Wike, Chief Counsel, and William E. Grantmyre, Staff Attorney, for intervenor-appellee Public Staff – North Carolina Utilities Commission.

Stuart Saunders, Assistant Attorney General, Kevin Anderson, Senior Deputy Attorney General, and Jennifer T. Harrod, Special Deputy Attorney General, for intervenor-appellant Roy Cooper, Attorney General.

JACKSON, Justice.

In this case we consider whether the North Carolina Utilities Commission (the Commission) properly concluded that it is in the public interest to allow Aqua North Carolina (Aqua) to utilize a rate adjustment mechanism of the type described in section 62-133.12 of the North Carolina General Statutes. We conclude that the Commission's determination was based upon sufficient findings of fact and was supported by competent, material, and substantial evidence in view of the entire record. *See* N.C.G.S. § 62-94 (2013). Accordingly, we affirm.

Aqua is a public utility that provides water and sewer utility service to customers in North Carolina. On 2 August 2013, Aqua filed an application with the Commission seeking authority to increase its rates for water and sewer service in North Carolina. As part of its application, Aqua also requested authority to implement a rate adjustment mechanism pursuant to section 62-133.12, which states in pertinent part:

> The Commission may approve a rate adjustment mechanism in a general rate proceeding . . . to allow a water or sewer public utility to recover through a system improvement charge the incremental depreciation expense and capital costs associated with the utility's reasonable and prudently incurred investment in eligible water and sewer system improvements. The Commission shall approve a rate adjustment mechanism authorized by this section only upon a finding that the mechanism is in the public interest. The frequency and manner of rate adjustments under the mechanism shall be as prescribed by the Commission.

Id. § 62-133.12(a) (2013).

On 19 August 2013, the Commission entered an order declaring this proceeding to be a general rate case and suspending the proposed new rates for up to 270 days. The Commission scheduled six hearings across the state to receive public witness testimony. The Commission also scheduled an evidentiary hearing for 27 January 2014. The Attorney General of North Carolina and the Public Staff of the Commission intervened as allowed by law. *See id.* §§ 62-15, -20 (2013).

Subsequently, Aqua and the Public Staff entered into a Stipulation that resolved all the issues in the case between the two parties. At the time, the Commission had not adopted final rules establishing the appropriate procedures for implementing a rate adjustment mechanism. Nevertheless, the Stipulating Parties agreed that "this docket is the appropriate forum for a decision by the Commission on [Aqua's] request to implement a [rate adjustment] mechanism based on a finding that the [mechanism] is in the public interest." The Attorney General did not join in the Stipulation.

During the hearings before the Commission, fifty-four Aqua customers testified, and the parties presented testimony from several witnesses. Thirty customers expressed service-related concerns, which primarily focused on problems with water quality, such as receiving water that appeared discolored, contained sediment, caused damage to appliances, and stained laundry items. Customers also raised other concerns, including billing issues, low water pressure, and sulfur or chlorine odors. Customers "almost unanimously" opposed any rate increase.

At the evidentiary hearing, Aqua offered evidence supporting the conclusion that use of a rate adjustment mechanism is in the public interest. Aqua's President and Chief Operating Officer, Thomas J. Roberts, asserted that the mechanism would allow Aqua to adjust its rates to

recover money invested in "necessary, reasonable, approved and completed projects," with the cumulative rate adjustment limited to five percent of the total annual service revenues approved by the Commission in the current general rate case. Roberts stated that, as a result of these rate adjustments, Aqua would be able to fund "earlier and more robust investment in infrastructure" and recover its investments "on a more timely basis." In addition, Roberts noted that the mechanism would allow for "incremental adjustments" to rates, "rather than the sharp rate changes that are characteristic of general rate cases."

Roberts acknowledged that some customers have difficulties with discolored, sediment-laden water, and he stated that these problems are caused by naturally occurring iron and manganese present in ground water. Roberts testified that, although many customers do not find such water acceptable, it complies with environmental regulations and does not create any health risks. Roberts asserted that Aqua could employ a number of methods to improve water quality, and he stated that use of a rate adjustment mechanism would provide funding "to accelerate the investment needed to address these concerns."

In addition to discussing customers' concerns about water quality, Roberts stated that other aspects of Aqua's system need improvements. Roberts testified that an internal analysis had revealed that portions of Aqua's water main infrastructure are seriously outdated and need replacement. Roberts also stated that Aqua needs to fund replacement of motors, pumps, and other equipment, as well as implement measures to improve how the system copes with significant rain events. Ultimately, Roberts asserted that use of a rate adjustment mechanism would facilitate improvements to infrastructure and result in "fewer water quality related complaints, enhanced water pressure, and decreased main breaks."

Aqua witness Robert A. Kopas, Regional Controller for Aqua Ohio, Inc., provides financial supervision and guidance to Aqua North Carolina. He testified that Aqua had presented to the Commission a "three-year plan" listing possible future projects that could be eligible for recovery through a rate adjustment mechanism. Kopas explained that Aqua did not submit this document to seek Commission approval of any of the specific projects listed; instead, it was submitted to support the company's contention that use of a rate adjustment mechanism is in the public interest. Kopas asserted that before Aqua could recover any money through the mechanism, the company would have to construct an eligible improvement, place the improvement into service, and propose the improvement for inclusion in a rate adjustment, after which the

Commission and the Public Staff would determine the project's eligibility and the reasonableness of the associated costs.

Aqua witness Pauline M. Ahern, a principal with AUS Consultants, testified that a rate adjustment mechanism would partially mitigate regulatory lag, "which occurs during the time between the incurrence of a utility capital expenditure or expense and the time when the utility can begin to earn a return on . . . the capital investment or recovery of the expense incurred." Ahern stated that the mechanism "will improve the capital attractiveness of [Aqua], improve its service quality and reliability, and provide for more moderate, gradual rate increases."

The Public Staff presented testimony from David C. Furr, Director of the Public Staff's Water and Sewer Division. Furr testified that he had reviewed the three-year plan filed by Aqua in order to evaluate whether the listed projects might be eligible for recovery through a rate adjustment mechanism. Furr stated that Aqua's three-year plan did not contain enough detail for him to determine whether the projects would be eligible, and although the Public Staff had requested additional information, Aqua's response remained "materially inadequate." In contrast, Roberts testified that Aqua believed it had provided sufficient detail and that the company was "willing to give all the detail that the Public Staff and the Commission would want."

The Commission entered an order in Aqua's general rate case on 2 May 2014. The Commission noted that the water quality concerns raised by some Aqua customers were related to high concentrations of naturally occurring iron and manganese in the source supply of water. The Commission found that iron and manganese are "subjects of Department of Environment and Natural Resources (DENR) secondary – not primary – water quality standards, and thus do not represent health issues." Nevertheless, the Commission concluded that "[a]dditional attention is required to address the issues which arise from elevated levels of naturally occurring iron and manganese in the source water supply in certain Aqua systems."

In addition, the Commission found that enactment of section 62-133.12 "was intended to encourage and accelerate investment in needed water and sewer infrastructure" by "alleviat[ing] the effects of regulatory lag by allowing for earlier recovery of some portion" of "depreciation expense and capital costs." The Commission determined that if a rate adjustment mechanism were authorized here, "Aqua would be incentivized and encouraged to accelerate its investment in water and sewer infrastructure improvements to comply with applicable water

quality and effluent standards, including secondary water quality standards." Specifically, the Commission explained that the mechanism "will be available to fund projects to address problematic systemic secondary water quality issues should the Commission direct [Aqua] to undertake them in individual subdivision service areas." The Commission found that such additional investment in infrastructure would lead to "better water quality" and "improved system reliability." As a result, the Commission found that Aqua's request to implement a rate adjustment mechanism is in the public interest and therefore approved the company's request.

At the same time, the Commission ordered Aqua and the Public Staff "to develop and implement a plan to identify and respond to [significant] secondary water quality concerns" in particular service areas. The Commission required Aqua and the Public Staff, "[a]t a minimum," to file written reports on the first of June and the first of December every year while the rate adjustment mechanism is in effect. These written reports must describe any secondary water quality concerns affecting Aqua's customers. If a particular concern affects at least ten percent of the customers in an individual subdivision or at least twenty-five billing customers, additional information must be provided. In such cases the reports must recommend whether Aqua should be required to undertake corrective action with respect to specific water quality concerns.

The Commission noted that final rules implementing the rate adjustment mechanism had not been approved. The Commission concluded that it should adopt alternative procedures, which were set forth in appendices to its order, to enable Aqua to make the requisite filings and qualify for implementation of charges pursuant to the rate adjustment mechanism without having to file an additional general rate case application once final rules were adopted. The Attorney General appealed the Commission's order to this Court as of right pursuant to N.C.G.S. §§ 7A-29(b) and 62-90.

Subsection 62-79(a) of the North Carolina General Statutes "sets forth the standard for Commission orders against which they will be analyzed upon appeal." *State ex rel. Utils. Comm'n v. Carolina Util. Customers Ass'n* (*CUCA I*), 348 N.C. 452, 461, 500 S.E.2d 693, 700 (1998). Subsection 62-79(a) provides:

> (a) All final orders and decisions of the Commission shall be sufficient in detail to enable the court on appeal to determine the controverted questions presented in the proceedings and shall include:

> (1) Findings and conclusions and the reasons or bases therefor upon all the material issues of fact, law, or discretion presented in the record, and
>
> (2) The appropriate rule, order, sanction, relief or statement of denial thereof.

N.C.G.S. § 62-79(a) (2013). When reviewing an order of the Commission, this Court may, *inter alia*,

> reverse or modify the decision if the substantial rights of the appellants have been prejudiced because the Commission's findings, inferences, conclusions or decisions are:
>
> (1) In violation of constitutional provisions, or
>
> (2) In excess of statutory authority or jurisdiction of the Commission, or
>
> (3) Made upon unlawful proceedings, or
>
> (4) Affected by other errors of law, or
>
> (5) Unsupported by competent, material and substantial evidence in view of the entire record as submitted, or
>
> (6) Arbitrary or capricious.

Id. § 62-94(b). Pursuant to subsection 62-94(b) this Court must determine "whether the Commission's findings of fact are supported by competent, material and substantial evidence in view of the entire record." *CUCA I*, 348 N.C. at 460, 500 S.E.2d at 699 (citation omitted). "Substantial evidence [is] defined as 'more than a scintilla or a permissible inference.' " *Id.* at 460, 500 S.E.2d at 700 (alteration in original) (quoting *State ex rel. Utils. Comm'n v. S. Coach Co.*, 19 N.C. App. 597, 601, 199 S.E.2d 731, 733 (1973), *cert. denied*, 284 N.C. 623, 201 S.E.2d 693 (1974)). "It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* (quoting *Consol. Edison Co. of New York v. NLRB*, 305 U.S. 197, 229, 59 S. Ct. 206, 217, 83 L. Ed. 126, 140 (1938)). The Commission must include all necessary findings of fact, and failure to do so constitutes an error of law. *Id.* (citation omitted).

The Attorney General argues that the Commission's finding that Aqua's request to use a rate adjustment mechanism is in the public interest is not based upon sufficient findings, reasoning, and conclusions,

and is not supported by substantial evidence. In addition, the Attorney General contends both that the Commission had no proper basis for this finding and that the Commission's conclusion that the mechanism would incentivize Aqua to invest in infrastructure and improve its service quality "is, at most, speculative" because the order did not impose any "concrete obligation, commitment, or anything else." We disagree.

"The Utilities Commission, not this Court, is the finder of fact in this proceeding. Findings of fact made by the Commission are prima facie just and reasonable on appeal." *State ex rel. Utils. Comm'n v. Eddleman*, 320 N.C. 344, 382-83, 358 S.E.2d 339, 363 (1987) (citations omitted). "[T]he Commission's findings, if supported by competent, material, and substantial evidence in view of the record as a whole, are binding upon this Court." *State ex rel. Utils. Comm'n v. Pub. Staff*, 317 N.C. 26, 45, 343 S.E.2d 898, 910 (1986) (citing *State ex rel. Utils. Comm'n v. Carolina Tel. & Tel. Co.*, 267 N.C. 257, 148 S.E.2d 100 (1966)). As a result, if there is substantial evidence to support the Commission's determination, this Court will not substitute its judgment for that of the Commission. *Id.* at 46-47, 343 S.E.2d at 910-11.

By enacting section 62-133.12, the General Assembly authorized the use of a rate adjustment mechanism upon a "finding" by the Commission "that the mechanism is in the public interest." N.C.G.S. § 62-133.12(a). As previously stated, the Commission found that allowing Aqua to use a rate adjustment mechanism is in the public interest. In making this determination, the Commission initially found that the legislative intent behind section 62-133.12 was to provide a mechanism to incentivize quicker investments in water and sewer infrastructure by allowing for faster recovery of some portion of invested costs.

The Commission explained that, because of the time involved in preparing and processing general rate cases, the long periods of construction required for major projects, and the Commission's use of historical test years in setting rates, a regulatory lag period occurs between when a utility invests in improvements and when it begins to recover the capital costs of those improvements. The Commission noted that Roberts had testified that implementing a rate adjustment mechanism would allow Aqua to recover invested funds more quickly and therefore enable Aqua to invest more capital in this state. Similarly, the Commission observed that Ahern had testified that use of the mechanism would result in "[p]artial mitigation of [regulatory] lag" and lead to water quality improvements that otherwise would be delayed. After considering their testimony and the arguments raised by the Attorney General, the Commission concluded that implementing the mechanism

"will promote adequate, reliable, and economical utility service for Aqua's customers" by "incentiviz[ing] Aqua to increase and accelerate infrastructure improvements." These findings are supported by the testimony of Roberts and Ahern.

The Commission discussed the "secondary water quality issues" raised by Aqua's customers and found that, as stated by Roberts, these problems result from high concentrations of iron and manganese found naturally in sources of groundwater within Aqua's system. The Commission determined that in the past, water utilities may have given lower priority to correcting secondary water quality issues because these companies first spend their limited budgets on primary water quality improvements. The Commission found that use of a rate adjustment mechanism would benefit customers further because accelerated funding will be available for projects undertaken at the Commission's direction to improve secondary water quality. The Commission then ordered Aqua and the Public Staff to file written reports addressing secondary water quality concerns twice each year while the mechanism is in effect and required that these filings detail particular water quality problems and make recommendations on whether Aqua should be ordered to pursue corrective action. Rather than solely relying upon a commitment by Aqua or the Public Staff, the Commission affirmatively imposed obligations to ensure that Aqua would use the rate adjustment mechanism only to make meaningful improvements to its system.

The Commission further noted that pursuant to the alternative procedures it had adopted in its order, approval of the mechanism would not result in automatic surcharges for customers. The Commission explained that these procedures require Aqua to obtain Commission approval for any additional charges, and the approval process will involve review by the Public Staff and the Commission to determine whether Aqua's investments and costs are reasonable and prudent. Furthermore, the Commission explained that Aqua could use the mechanism to recover only those costs that are invested in "eligible system improvements" that are "completed and placed in service prior to the Company requesting approval."

The Commission acknowledged that witness Furr had testified that Aqua's initial three-year plan was "materially deficient," but noted that Roberts had testified that Aqua "is willing to provide all information required by the Public Staff." In addition, the Commission found that, because this case involves a new process, "one party . . . may believe the level of detail provided is sufficient; whereas, another party may not." The Commission also directed Aqua to provide enough information to

allow the Public Staff to "conduct its investigation and review of [Aqua's] initial three-year plan," "have productive discussions with [Aqua] regarding the specific projects included in the plan," and "conclude whether the projects included in [the] three-year plan meet the criteria established in [section] 62-133.12" to "be considered for recovery through the [rate adjustment] mechanism."

Ultimately, the Commission found that

> Aqua would be incentivized and encouraged to accelerate its investment in water and sewer infrastructure improvements to comply with applicable water quality and effluent standards, including secondary water quality standards, if authorized to utilize a [rate adjustment] mechanism to recover some of its investment in a more timely manner and alleviate the effects of regulatory lag. Such accelerated investment to address aging infrastructure and water quality issues would benefit customers through improved system reliability and better water quality. The [rate adjustment] mechanism would further benefit customers because it will be available to fund projects to address problematic systemic secondary water quality issues should the Commission direct the Company to undertake them in individual subdivision service areas, even though such projects may not be specifically required by federal and/or state standards and might not be of high system priority absent the direction of the Commission. The [rate adjustment] mechanism does not affect or take away the Commission's authority to disallow recovery for projects and investments found to be unreasonable and imprudent.

The Commission thoroughly explained how Aqua's use of a rate adjustment mechanism would benefit Aqua's customers, and the Commission took meaningful steps to ensure that problems with water quality are addressed and that customers are charged only after Aqua has made improvements to the quality and reliability of its service. We hold that the Commission provided sufficient findings, reasoning, and conclusions to support its ultimate finding that the mechanism is in the public interest, and that the Commission's determination is supported by substantial evidence in view of the record as a whole. Accordingly, the Commission's order is affirmed.

AFFIRMED.

IN RE BURKE

[368 N.C. 226 (2015)]

IN THE MATTER OF LYNN MARIE BURKE

No. 410A14

Filed 21 August 2015

Attorneys—application to take Bar exam denied—candor and truthfulness—pattern of omitting past criminal offenses

The denial of petitioner's application to stand for the July 2011 North Carolina Bar Examination was affirmed where the Board of Law Examiners (Board) concluded that petitioner "failed to carry her burden of proving she possesses the requisite general fitness and good moral character expected of attorneys licensed to practice law in North Carolina." The Board considered the evidence in the record as a whole and concluded that petitioner had demonstrated "a lack of candor and truthfulness" in that she had committed a substantial number of criminal offenses throughout the 1980s and 1990s; failed to disclose six criminal convictions on her law school application; omitted seven criminal charges on her District of Columbia Bar application and six charges of failure to appear on her North Carolina Bar application; and her accounts of a shoplifting incident differed. Counsel for the Board did not dispute petitioner's assertion that she had turned her life around and subsequently "has done remarkable things in her life." The Board weighed all the evidence, reached a decision, and the Board's decision was supported by substantial evidence in view of the whole record.

Appeal of right pursuant to section .1405 of the Rules Governing Admission to the Practice of Law in the State of North Carolina from an order entered on 1 October 2014 by Judge Paul C. Ridgeway in Superior Court, Wake County, affirming the 14 May 2013 order of the Board of Law Examiners denying the applicant's application to stand for the July 2011 North Carolina Bar Examination. Heard in the Supreme Court on 20 April 2015.

Robert F. Orr; and Poyner Spruill LLP, by Andrew H. Erteschik, Carrie V. McMillan, and J.M. Durnovich, for petitioner-appellant Lynn Marie Burke.

Roy Cooper, Attorney General, by Robert C. Montgomery, Senior Deputy Attorney General, and H. Dean Bowman, Special Deputy Attorney General, for respondent-appellee North Carolina Board of Law Examiners.

JACKSON, Justice.

In this case we consider whether the Board of Law Examiners (the Board) erred by concluding that petitioner Lynn Marie Burke "failed to carry her burden of proving she possesses the requisite general fitness and good moral character expected of attorneys licensed to practice law in North Carolina." We conclude that the Board's decision is supported by substantial evidence in view of the whole record. Accordingly, we affirm.

In May 2010, petitioner received her Juris Doctor degree from North Carolina Central University School of Law. After law school, petitioner initially applied for, and later received, a license to practice law in Washington, D.C. In October 2010, while her District of Columbia Bar application still was pending, petitioner applied to take the North Carolina Bar Examination. In her North Carolina Bar application, petitioner disclosed forty incidents between 1983 and 2004 in which she had been accused of criminal offenses including forgery, larceny, shoplifting, writing worthless checks, using a stolen credit card, possessing stolen property, and obtaining property by false pretenses. Petitioner acknowledged that many of these incidents had resulted in criminal convictions.

Because of concerns about her application, the Board sent petitioner a notice instructing her to appear at a hearing before a panel of the Board. The notice stated that during the hearing, petitioner would be asked to testify regarding the criminal charges that she had disclosed in her application. In addition, the notice stated that petitioner would be questioned about several criminal charges that she failed to disclose in her applications for admission to law school, the District of Columbia Bar, and the North Carolina Bar. The hearing was conducted on 28 September 2011, and subsequently, the panel directed petitioner to appear at a de novo hearing before the full Board.

The de novo hearing was held on 9 and 10 January 2013. Petitioner testified at the hearing in support of her application and explained that, beginning in the 1980s, she committed a number of criminal offenses, which she characterized as being motivated by financial necessity. Yet she also stated that her life started to change after a particular incident of shoplifting that occurred in 2002. Petitioner testified that on this occasion, which occurred the day of her twin daughters' prom, she had attempted to take prom dresses from a department store by concealing them in a bag. Petitioner stated that after she was caught and her daughters learned what she had done, the extent of her criminal conduct was "put in front of [her] face." She testified that subsequently, she began

going to counseling and started working for her father. She testified that she had not stolen anything since the incident in 2002.

Petitioner stated that she had been truthful about her criminal history when applying to law school, the District of Columbia Bar, and the North Carolina Bar. Although petitioner acknowledged that she had "neglected" to include some of her criminal history in her law school application and her two bar applications, she testified that the omissions occurred because she "just forgot." Petitioner stated that she had amended each application to correct the omissions.

Petitioner was questioned about discrepancies between her testimony concerning the shoplifting incident from 2002 and two written statements she had drafted. Specifically, petitioner was asked about the following statement initially submitted as part of amendments to her District of Columbia and North Carolina Bar applications, which appeared to contain materially different facts when compared with her testimony:

> I was at Crabtree Valley mall with my twin daughters. They were going to the prom in a week. I had their prom dresses in a shopping bag to take them to be hemmed at the tailor shop. While I was waiting for them, I went to Dillard's Department store. I knew that they did not have the proper undergarments to wear under the dresses and I attempted to take them. . . . [T]he store security guard . . . . charged me with larceny of the dresses and shoplifting of the undergarments. My daughter went back later on that day with the receipts for the dresses and was given them back.

Next, petitioner was asked about a later filing submitted to the District of Columbia Court of Appeals Committee on Admissions (District of Columbia Bar Committee) asserting that the incident occurred one day before the prom and involved the attempted theft of two prom dresses and shoes. Petitioner stated that the discrepancy arose because she had difficulty obtaining records related to the incident. Petitioner testified that the statement made in the amendments to her District of Columbia and North Carolina Bar applications came from memory and contained inaccurate details. She stated that "it took . . . a couple of weeks" to obtain relevant documents, but explained that she had more complete information by the time she prepared the later filing submitted to the District of Columbia Bar Committee. Although the revised narrative was introduced at the hearing and was part of the record before the Board,

petitioner acknowledged that she also "should have re-amended" her North Carolina Bar application to reflect the updated information.

On 14 May 2013, the Board entered an order denying petitioner's application. In its order the Board noted that petitioner had committed a substantial number of criminal offenses throughout the 1980s and 1990s. The Board found that petitioner had failed to disclose six criminal convictions on her law school application and that she had received a letter of caution from the school "remind[ing]" her of her "obligation to provide full disclosure." In addition, the Board stated that petitioner had omitted seven criminal charges on her District of Columbia Bar application and six charges of failure to appear on her North Carolina Bar application.

The Board discussed how petitioner's accounts of the 2002 shoplifting incident differed. The Board explained that in petitioner's initial written account, she asserted that "she had taken the prom dresses (previously purchased) to a tailor to be hemmed," and after unsuccessfully attempting to steal undergarments to go with the dresses, she eventually produced receipts for the dresses and had them returned to her. The Board noted that this written account differed from petitioner's testimony describing the event and concluded that the differences "showed a lack of candor."

Ultimately, the Board found by the greater weight of the evidence that

> (a) [Petitioner] failed to disclose on her application to North Carolina Central University School of Law six criminal convictions including Resisting a Public Officer, four Worthless Checks, and Misdemeanor Forgery and Uttering,
>
> (b) [Petitioner] failed to disclose seven criminal charges on her District of Columbia Bar Application,
>
> (c) [Petitioner] was charged on six (6) occasions with Failure to Appear,
>
> (d) [Petitioner] failed to disclose six (6) charges of Failure to Appear on her North Carolina Bar Application,
>
> (e) [Petitioner] was charged with 40 criminal charges between 1983-1999,
>
> (f) In May 1988, [petitioner] was convicted of multiple felony counts of False Pretense and Obtaining Property by False Pretenses and placed on probation,

> (g) Within a matter of months, [petitioner] began shoplifting again and was arrested. She was sentenced to 10 years imprisonment and was incarcerated in North Carolina for 20 months,
>
> (h) In 2002, [petitioner] attempted to steal two prom dresses from a department store in Raleigh, North Carolina and was charged with Larceny. [Petitioner] showed a lack of candor in her testimony regarding this event which differed from the way she had described the event in her District of Columbia Bar [A]pplication,
>
> (i) [Petitioner] ignored her obligations to the courts of North Carolina which caused her to be charged on six separate occasions with Failure to Appear.

The Board concluded that "the foregoing conduct, individually and collectively, as well as [petitioner's] testimony at her full Board hearing regarding these matters demonstrate a lack of candor and truthfulness." Accordingly, the Board ruled that petitioner had failed to carry her burden of proving that she possesses the requisite general fitness and good moral character expected of North Carolina attorneys. Petitioner filed a petition for judicial review in the Superior Court, Wake County. Applying the whole record test, the court found that the Board's decision was supported by substantial evidence and therefore affirmed that decision. Petitioner appealed to this Court as of right pursuant to section .1405 of the Rules Governing Admission to the Practice of Law in the State of North Carolina.

In her appeal petitioner argues that the Board's findings and conclusions related to her alleged misstatements and omissions are not supported by the evidence. Specifically, petitioner contends that these misstatements and omissions were unintentional and immaterial, and did not demonstrate a lack of candor and truthfulness. We disagree.

This Court uses the whole record test when reviewing decisions of the Board. *In re Gordon*, 352 N.C. 349, 352, 531 S.E.2d 795, 797 (2000) (citations omitted). The whole record test requires this Court to evaluate all the evidence, including "that which supports as well as that which detracts from the Board's findings," and determine whether substantial evidence supports the Board's findings of fact and conclusions of law. *Id.* at 352, 531 S.E.2d at 797 (quoting *In re Moore*, 308 N.C. 771, 779, 303 S.E.2d 810, 816 (1983)). Substantial evidence is "relevant evidence which a reasonable mind . . . could accept as adequate to support a conclusion." *Id.* at 352, 531 S.E.2d at 797 (alteration in original) (quoting

In re Golia-Paladin, 344 N.C. 142, 149, 472 S.E.2d 878, 881 (1996), *cert. denied*, 519 U.S. 1117, 117 S. Ct. 962, 136 L. Ed. 2d 847 (1997)).

"Good moral character has many attributes, but none are more important than honesty and candor." *In re Legg*, 325 N.C. 658, 672, 386 S.E.2d 174, 182 (1989) (quoting *In re Green*, 464 A.2d 881, 885 (Del. 1983) (per curiam)), *cert. denied*, 496 U.S. 906, 110 S. Ct. 2589, 110 L. Ed. 2d 270 (1990). "Testimony that is contradictory, inconsistent, or inherently incredible is a sufficient basis upon which to deny admission on character grounds." *In re Braun*, 352 N.C. 327, 335, 531 S.E.2d 213, 218 (2000) (citing *In re Elkins*, 308 N.C. 317, 326, 302 S.E.2d 215, 220, *cert. denied*, 464 U.S. 995, 104 S. Ct. 490, 78 L. Ed. 2d 685 (1983)). Similarly, "[m]aterial false statements can be sufficient to show the applicant lacks the requisite character and general fitness for admission to the Bar." *In re Legg*, 325 N.C. at 672, 386 S.E.2d at 182 (quoting *In re Elkin*s, 308 N.C. at 327, 302 S.E.2d at 221). In the case *sub judice* the Board concluded that petitioner had failed to carry her burden of demonstrating that she possesses the requisite character for admission, partly because of her past criminal conduct and partly because of numerous misstatements and omissions that were revealed by the evidence. The evidence establishes that petitioner submitted inaccurate accounts of the 2002 shoplifting incident to both the Board and the District of Columbia Bar Committee. Her initial narrative contained specific but inaccurate details, such as taking the prom dresses to be hemmed, being falsely accused of shoplifting the dresses, and having the dresses later returned to her. Subsequently, petitioner submitted to the District of Columbia Bar Committee a revised statement asserting that the incident occurred on the night before the prom and that she stole prom dresses and shoes, while in her North Carolina Bar application, petitioner stated that the incident happened a week before the prom. Petitioner acknowledged that she "should have re-amended" her North Carolina Bar application to reflect this revised statement. Finally, during her testimony before the Board, petitioner stated that the incident occurred both on the day of the prom and the night before. When she was asked "exactly" what she attempted to take, she responded, "It was the dresses," and when asked whether she attempted to take "[a]nything else," she said, "No." These three accounts each differ significantly with respect to factual details such as when the incident occurred and what was taken. The Board did not err by considering petitioner's testimony and other statements and concluding that she demonstrated "a lack of candor."

Moreover, "a purposeful pattern of omitted material information" can support a conclusion that an applicant has failed to establish the

good moral character required to practice law. *In re Legg*, 325 N.C. at 672, 386 S.E.2d at 182. Here petitioner omitted multiple criminal charges when preparing her law school application, District of Columbia Bar application, and North Carolina Bar application. On 9 September 2008, petitioner sent a letter to Dean Raymond Pierce of North Carolina Central University School of Law stating that she had discovered that she had omitted six criminal convictions from her law school application and requesting to amend her application. These convictions were for resisting a public officer, writing worthless checks, and misdemeanor forgery and uttering. She received a letter of caution from the University dated 13 May 2009 "as a reminder of [her] obligation to provide full disclosure." This letter specifically warned petitioner that the omissions in her law school application "might be perceived as a willingness to withhold or omit information that is not favorable to [her], in circumstances in which complete candor is required."

Nevertheless, in May 2010, when she applied for admission to the District of Columbia Bar, petitioner again omitted seven criminal charges including resisting a public officer, writing worthless checks, and obtaining property by false pretenses. A charge related to the shoplifting incident from 2002 also was omitted. Petitioner amended her application to correct these omissions in a filing dated 11 January 2011, which noted that the omissions were "brought to [her] attention . . . by the Board of NC Bar Examiners" on 5 January 2011. Finally, in a filing dated 19 January 2011, petitioner amended her North Carolina Bar application to include six charges of failure to appear. Petitioner stated that she omitted these charges from her initial application because she "did not consider" charges of failure to appear that arose from traffic offenses. Ultimately, the evidence establishes omissions of multiple criminal charges in three separate applications, even though petitioner previously had received a letter emphasizing the importance of full disclosure.

The Board considered the evidence in the record as a whole and concluded that petitioner had demonstrated "a lack of candor and truthfulness." This Court will not "replace the Board's judgment as between two reasonably conflicting views, even though the [C]ourt could justifiably have reached a different result had the matter been before it *de novo*." *In re Elkins*, 308 N.C. at 322, 302 S.E.2d at 217-18 (quoting *Thompson v. Wake Cnty. Bd. of Educ.*, 292 N.C. 406, 410, 233 S.E.2d 538, 541 (1977)). "As long as the Board does not act in an arbitrary, capricious, or erroneous manner, it has, as an instrument of the State, 'wide freedom to gauge on a case-by-case basis the fitness of an applicant to practice law.' " *In re Braun*, 352 N.C. at 335, 531 S.E.2d at 218 (quoting *In re Golia-Paladin*,

344 N.C. at 152, 472 S.E.2d at 883). Applying the whole record test, we conclude that petitioner's past conduct, her contradictory statements about the shoplifting incident in 2002, her acknowledgment that she "should have re-amended" her North Carolina Bar application after learning that she had submitted incorrect information to the Board, and her numerous omissions from law school and bar applications support the Board's conclusion. Accordingly, petitioner's argument is without merit.

Next, petitioner argues that the Board's Guidelines for Determining Character and Fitness of Bar Applicants require the Board to consider "evidence of rehabilitation." Petitioner contends that the Board failed to make any findings of fact regarding whether she had demonstrated rehabilitation. "Administrative agencies must find facts when factual issues are presented." *In re Rogers*, 297 N.C. 48, 56, 253 S.E.2d 912, 918 (1979). Even so, "[i]n cases in which all the essential facts either appear on the face of the application or are otherwise indisputably established, the Board need only weigh the evidence and determine whether the applicant has shown his good moral character." *Id.* at 56, 253 S.E.2d at 917. In *In re Rogers* this Court explained that the Board erred by failing to make findings of fact because, given the evidence presented, "[t]he Board could have found that [the applicant] had not shown his good moral character only if it believed" that he had committed two specific wrongful acts, which he denied. *Id.* at 60, 253 S.E.2d at 920. But in the case *sub judice* counsel for petitioner stated at the hearing that "the facts in this case are not in dispute." Similarly, counsel for the Board did not dispute petitioner's assertion that she had turned her life around and subsequently "has done remarkable things in her life." The Board made proper findings describing both petitioner's past conduct and her present failure to provide full and accurate disclosure in her law school and bar applications, weighed all the evidence, and reached a decision. The Board did not err by declining to make specific findings about rehabilitation when its ultimate decision was based upon "an exercise of delicate judgment" after evaluating undisputed evidence. *Id.* at 56, 253 S.E.2d at 917 (quoting *Schware v. Bd. of Bar Examiners*, 353 U.S. 232, 248, 77 S. Ct. 752, 761, 1 L. Ed. 2d 796, 807 (1957) (Frankfurter, Clark & Harlan, JJ., concurring)). Accordingly, petitioner's argument on this issue is also without merit.

For the foregoing reasons, we affirm the order of the Superior Court, Wake County, which affirmed the Board's 14 May 2013 decision denying petitioner's application to stand for the July 2011 North Carolina Bar Examination.

AFFIRMED.

ROBERT CARPENTER AND TAMMY CARPENTER, INDIVIDUALLY AND TAMMY CARPENTER AS ADMINISTRATOR OF THE ESTATE OF MONIQUE L. CARPENTER	)	
v.	)	From Guilford County
WILLIE MCKINNEY, INDIVIDUALLY AND JOINTLY AND SEVERALLY WITH WINDHAM HEATING AND AIR CONDITIONING, INC., INDIVIDUALLY AND JOINTLY AND SEVERALLY WITH OLD REPUBLIC HOME PROTECTION COMPANY, INC., INDIVIDUALLY AND JOINTLY AND SEVERALLY WITH PAUL EDWARD WINDHAM, INDIVIDUALLY AND D/B/A WINDHAM HEATING & AIR	)	

No. 266P14

ORDER

The plaintiffs' petition for writ of certiorari is allowed only as to whether the Court of Appeals erred by dismissing plaintiffs' appeal as interlocutory. The petition is denied as to any remaining issues.

By Order of this Court, this 20th day of August, 2015.

s/Ervin, J.

For the Court

KING v. BRYANT

[368 N.C. 235 (2015)]

ROBERT E. KING AND WIFE, JO ANN O'NEAL	)	
v.	)	From Cumberland County
MICHAEL S. BRYANT, M.D., AND VILLAGE SURGICAL ASSOCIATES, P.A.	)	

No. 294PA14

ORDER

This case has come before the Court by way of defendants' Petition for Discretionary Review. Defendants sought review of the second opinion of the Court of Appeals in *King v. Bryant* (*King II*), ___ N.C. App. ___, 763 S.E.2d 338, 2014 WL 3510481 (2014) (unpublished). There the Court of Appeals held that it was bound by its prior opinion in the same case to hold that a fiduciary relationship existed between the parties. *Id.* at *6. A close reading of that first opinion reveals, however, that the court did not specifically hold that such a relationship existed. *King v. Bryant* (*King I*), ___ N.C. App. ___, ___, 737 S.E.2d 802, 808-09 (2013) (discussing that the physician–patient relationship gives rise to a fiduciary duty, but never stating that such a relationship existed here). Nonetheless, it appears that on remand the trial court may have interpreted *King I* in the same manner as the second panel of the Court of Appeals did in *King II* and thus assumed the existence of such a relationship. As a result, the trial court made no findings of fact regarding when the physician–patient relationship (and any resulting fiduciary relationship) began.

Because when this relationship was formed is an essential fact for our review here, this Court, on its own motion, ORDERS this case certified to the trial court for findings of fact necessary to determine this issue as presented by defendants in their Petition: "Whether a physician–patient relationship existed at the time Mr. King signed the arbitration agreement." The trial court is directed to hold the necessary hearings and certify its findings to this Court within 120 days of the filing date of this order.

By order of the Court in Conference, this 20th day of August, 2015.

s/Ervin, J.

For the Court

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001P11-2	State v. Lacy Lee Williams, Jr.	Def's *Pro Se* Petition for *Writ of Habeas Corpus*	Denied **02/09/2015**
002P15	State v. Tremayne Antoine Lynch	Def's PDR Under N.C.G.S. § 7A-31	Denied
003P15	Eric Tucker v. Fayetteville State University and James A. Anderson, Chancellor	Plt's PDR Under N.C.G.S. § 7A-31 (COA14-178)	Denied
005P15	Commscope Credit Union v. Butler & Burke, LLP, a North Carolina Limited Liability Partnership v. Barry D. Graham, James L. Wright, Ed Dutton, Frank Gentry, Geral Hollar, Joe Cresimore, Mark Honeycutt, Rose Sipe, Todd Pope, Jason Cushing, and Scott Saunders	1. Def/Third-Party Plt's PDR (COA14-273) 2. Motion of the N.C. Association of Certified Public Accountants and the American Institute of Certified Public Accountants for Leave to File *Amicus Curiae* Brief 3. Motion by Cherry Bekaert LLP, and CliftonLarsonAllen LLP and Dixon Hughes Goodman LLP for Leave to File *Amicus Curiae* Brief in Support of Def/ Butler & Burke, LLP 4. Motion by the N.C. Chamber for Leave to File Brief *Amicus Curiae* 5. Motion by the National Association of State Boards of Accountancy for Leave to File *Amicus Curiae* Brief	1. Allowed 2. Dismissed as moot 3. Allowed 4. Dismissed as moot 5. Dismissed as moot **Beasley, J., recused**
007P15	State v. Christopher W. Oden	Def's *Pro Se* PWC to Review Order of COA (COAP14-222)	Dismissed
009A14	Tovar-Mauricio, et al. v. T.R. Driscoll, Inc., et al.	1. Motion to Withdraw as Counsel 2. Motion to Substitute Counsel	1. Allowed 2. Allowed
013P15	George T. Powell, Jr. v. George R. Brown, Penny R. Powers, Robert E. Rousseau, and Shafic Androas	Plt's *Pro Se* Motion for Notice of Appeal	Dismiss *ex mero motu*
017P15	Philip J. Mohr, as Administator of the Estate of Sam Monroe Matthews v. John C. Matthews, Gloria Matthews, and Joby Matthews	Plt's PDR Under N.C.G.S. § 7A-31 (COA14-271)	Denied

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018P15	State v. Jose Valvere-Liborio	Def's *Pro Se* Motion for PDR (COA09-296)	Denied
019P15	State v. Henry Ford Adkins	Def's *Pro Se* Petition for Writ of *Certiorari* to Review Order of COA (COAP14-978)	Dismissed
021P15	State v. Leon M. Knight, Jr.	1. Def's *Pro Se* Petition for Writ of *Certiorari* to Review Order of Superior Court of Pasquotank County 2. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Dismissed as moot
022PA14	Thomas C. Wetherington v. N.C. Department of Crime Control and Public Safety; North Carolina Highway Patrol	1. State's Motion for Consolidation 2. State's Motion to Amend Certificate of Service for Notice of Appearance and Motion to Consolidate 3. Respondent's Motion to Substitute Party 4. State's Motion to Appear	1. Denied 2. Allowed 3.Allowed 4. Denied **Ervin, J., recused**
023P15	State v. Jackie Emmitt Moorehead	1. Def's *Pro Se* PWC to Review Order of Superior Court of Halifax County 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Allowed 3. Dismissed as moot
030P15	State v. Crystal Ann Sitosky	1. State's Motion for Temporary Stay 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31 (COA14-639)	1. Allowed **01/20/2015** Dissolved **03/05/2015** 2. Denied 3. Denied

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031P15	State v. Anthony Dominick A. Figurelli and State v. Stephen Marshall Sarday	1. Def Sarday's Motion for Temporary Stay 2. Def Sarday's Petition for *Writ of Supersedeas* 3. Def' Sarday's Notice of Appeal Based Upon a Constitutional Question (COA14-483) 4. Def. Sarday's PDR Under N.C.G.S. § 7A-31 5. State's Motion to Dismiss Def. Sarday's Notice of Appeal 6. Def Figurelli's Motion for Temporary Stay 7. Def Figurelli's Petition for *Writ of Supersedeas* (COA14-483) 8. Def Figurelli's Notice of Appeal Based Upon a Constitutional Question 9. Def Figurelli's PDR Under 7A-31 10. State's Motion to Dismiss Def Figurelli's Notice of Appeal	1. Allowed **01/20/2015** Dissolved **03/05/2015** 2. Denied 3. --- 4. Denied 5. Allowed 6. Allowed **01/27/2015** Dissolved **03/05/2015** 7. Denied 8. --- 9. Denied 10. Allowed
035P15	State v. Charles Michael Lightsey	Def's PDR Under N.C.G.S. § 7A-31 (COA14-576)	Denied
041P15	State v. William Antwain Patterson	Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA14-618)	Denied
049A15	State v. Shawn Adrian Pendergraft	1. Def's NOA Based Upon a Dissent (COA14-39) 2. Def's PDR as to Additional Issues	1. --- 2. Denied **Ervin, J., recused**
049PA14	State v. James Kevin Moir	Def's Motion to Substitute Counsel	Allowed **01/29/2015**
050P15	State v. Aaron Murdock Suggs	Def's *Pro Se* Motion to Vacate Sentence	Dismissed

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053P15	State v. Margaret K. Sewell	1. State's Motion for Temporary Stay (COA14-269) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **2/04/2015** Dissolved **03/05/2015** 2. Denied 3. Denied
065P15	State v. Keith Antonio Barnett	1. State's Motion for Temporary Stay (COA14-447) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **02/06/2015** 2. 3. **Beasley, J., recused**
067P15	State v. Leroy Phillips	Def's *Pro Se* Motion for PDR of the Decision of the COA	Dismissed
068P15	Sampson County Board of Education v. Andrew T. Heath, in his official capacity as Chair of the North Carolina Industrial Commission	1. Plt's Motion for Temporary Stay 2. Plt's Petition for *Writ of Supersedeas* 3. Plt's PDR 4. Plt's Motion to Amend Title of "Amended PDR Under N.C. Gen Stat § 7A-31(c) and Petition for *Writ of Supersedeas* and Motion to Stay" to Petition for Writ of *Certiorari*, Petition for *Writ of Supersedeas* and Motion to Stay" 5. Motion to Admit Diane Marger Moore *Pro Hac Vice* 6. Def's Motion to Withdraw Amended PDR, Petition for *Writ of Supersedeas*, and Motion for Temporary Stay	1. Allowed **02/10/2015** Dissolved **03/02/2015** 2. — 3. — 4. Allowed **02/11/2015** 5. Allowed **02/19/2015** 6. Allowed **03/02/2015**
077P15	In the Matter of M.G. and H.G.	1. Petitioner's Motion for Temporary Stay (COA14-934) 2. Petitioner's Petition for *Writ of Supersedeas* 3. Petitioner's PDR Under N.C.G.S. § 7A-31	1. Allowed **02/23/2015** 2. 3.

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082P15	In the Matter of A.E.C.	1. Petitioner's Motion for Temporary Stay (COA14-854) 2. Petitioner's Petition for *Writ of Supersedeas* 3. Petitioner's PDR Under N.C.G.S. § 7A-31 4. Petitioner's Motion to Deem PDR Timely filed	1. Allowed **02/25/2015** 2. 3. 4.
105P14	Donna G. Clements, by and through her Guardian of the Estate, Kimberly Batten v. Robert S. Clements et al.	1. Plt's PDR Under N.C.G.S. § 7A-31 (COA13-596) 2. Plt's Motion to Amend Certificate of Service for PDR 3. Defs' (Alexandra Lee Clements Irrevocable Trust and the Kyle Davis Clements Irrevocable Trust by and through Their Trustee, Michael Green, and Intervenors Alexandra Lee Clements and Kyle Davis Clements, a Minor, by and through his Guardian *Ad Litem*, Charles Meier) Conditional PDR Under N.C.G.S. § 7A-31	1. Denied 2. Dismissed as moot 3. Dismissed as moot
111P14-2	Judy Knox v. University of North Carolina at Charlotte	Petitioner's *Pro Se* Motion for Notice of Appeal Based on Dissent in Court of Appeals (COA14-229)	Dismissed as moot
115PA14	Millie E. Hershner v. N.C. Department of Administration and the N.C. Human Relations Commission	Def's Motion to Withdraw PDR	Allowed **02/09/2015** **Ervin, J., recused**
128P14-2	State v. Michael Edward Brooks	Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COAP13-33)	Dismissed
130P14	State v. Michael Anthony Shannon	Def's PWC to Review Decision of COA (COA13-214)	Denied
172P11-4	State v. Kelvin Errol Smith	Def's *Pro Se* PWC to Review Order of Superior Court of Buncombe County	Dismissed
189P14	State v. Lateisha Maria Jandreau	Def's PDR Under N.C.G.S. § 7A-31 (COA13-735)	Denied **Ervin, J., recused**

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202P14	State v. Dameon Jose Glover	Def's *Pro Se* Motion for Appeal to North Carolina Supreme Court (COA13-1079)	Denied
234P05-2	State v. Gregory Allen Gant	Def's *Pro Se* Motion for PDR Under N.C.G.S. § 7A-31(c) (COAP14-950)	Denied
254P08-2	State v. Michael Orlando Cook	Def's *Pro Se* Motion for PDR	Dismissed
258P14	SRS Arlington Offices 1, LLC, et al. v. Arlington Condominium Owners Association, Inc., and Arlington Commercial Holdings, LLC, and James J. Gross	1. Defs' (Arlington Commercial Holdings, LLC, and James J. Gross) PDR Under N.C.G.S. § 7A-31 (COA13-808) 2. Def's (Arlington Condominium Owners Association, Inc.) Conditional PDR Under N.C.G.S. § 7A-31	1. Denied 2. Dismissed as moot
270P14	Terri Lynn Robertson and Mary Dianne Godwin Daniel v. Steris Corporation, a Delaware Corporation, et al.	Plts' PDR Under N.C.G.S. § 7A-31 (COA13-1301)	Denied **Ervin, J., recused**
290P14	State v. Robert Leroy Williams	1. Def's NOA Based Upon a Constitutional Question (COA13-1280) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed **Ervin, J., recused**
300P14	In the Matter of S.H., J.H., S.B., Minor Children	1. Respondent-Mother's PDR (COA14-196) 2. Petitioner's Motion to Dismiss	1. Denied 2. Dismissed as moot
309P14	State v. Elizabeth Harrelson Mead	Def's PDR Under N.C.G.S. § 7A-31 (COA14-3)	Denied
332P14	State v. Gregory Aldon Perkins	1. Def's Notice of Appeal Based on a Constitutional Question 2. Def's PDR Under N.C.G.S. § 7A-31 (COA13-1352) 3. Def's Motion to Amend Notice of Appeal and PDR	1. Dismissed *ex mero motu* 2. Allowed 3. Allowed

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353P14	Surgical Care Affiliates, LLC and Blue Ridge Day Surgery Center, L.P. v. N.C. Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section, and WakeMed, Intervenor	Petitioner's PDR Under N.C.G.S. § 7A-31 (COA13-1322)	Denied **Ervin, J., recused**
372A14	Hart et al. v. State	1. Americans United for Separation of Church and State, et al., Motion for Leave to File Amicus Brief 2. Helen F. Ladd, et al., Motion for Leave to File Amicus Brief	1. Allowed **02/03/2015** 2. Allowed **02/03/2015**
372A14	Hart et al. v. State	1. National Education Association's Motion for Leave to File Amicus Brief 2. Motion to Admit Philip A. Hostak *Pro Hac Vice*	1. Allowed **02/03/2015** 2. Allowed **02/03/2015**
372A14	Hart et al. v. State	Def-Intervenor's Motion to Substitute Party	Allowed **02/10/2015**
373A14	Cape Fear River Watch, et al. v. N.C. Environmental Management Commission, et al.	Petitioners' Motion to Substitute New Party Name	Allowed **02/02/2015** **Edmunds, J., recused**
373A14	Cape Fear River Watch, et al. v. N.C. Environmental Management Commission, et al.	Intervenor's Motion to Extend Time for Oral Argument	Denied **03/02/2015** **Edmunds, J., recused**
373A14	Cape Fear River Watch, et al. v. N.C. Environmental Commission, et al.	Petitioner's Motion to Extend Time for Oral Argument	Denied **03/02/2015** **Edmunds, J., recused**
374P13-2	State v. Marvin Wade Millsaps	1. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 2. Def's *Pro Se* Motion to Appoint Counsel 3. Def's *Pro Se* Motion for PDR	1. Allowed 2. Dismissed as moot 3. Dismissed **Ervin, J., recused**

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375A14	Arnesen et al. v. Rivers Edge Golf Club and Plantation, Inc., et al.	Plt's Motion for Extension of Time to File Reply Brief	Allowed **01/26/2015**
375P09-3	State v. Avenger Ridgeway	1. Def's *Pro Se* Petition for Writ of Mandamus (COAP13-292) 2. Def's *Pro Se* Motion to Amend Petition for Writ of Mandamus	1. Denied 2. Dismissed as moot
376A14	Anderson, et al. v. Coastal Communities at Ocean Ridge Plantation, Inc., et al.	Plt's Motion for Extension of Time to File Reply Brief	Allowed **01/26/2015**
377A14	Barton, et al. v. Coastal Communities at Ocean Ridge Plantation, Inc., et al.	Plaintiff's Motion for Extension of Time to File Reply Brief	**Allowed 01/26/2015**
378A14	Barry, et al. v. Ocean Isle Palms, Inc., et al.	Plaintiff's Motion for Extension of Time to File Reply Brief	Allowed **01/26/2015**
379A14	Beadnell, et al. v. Coastal Communities at Ocean Ridge Plantation, Inc. et al.	Plaintiff's Motion for Extension of Time to File Reply Brief	Allowed **01/26/2015**
384A14	Richardson, et al. v. The State of North Carolina, et al.	Motion to Admit Francisco M. Negron, Jr. *Pro Hac Vice*	Allowed **01/30/2015**
384A14	Richardson, et al. v. The State of North Carolina, et al.	Motion to Withdraw	Allowed **02/02/2015**
384A14	Richardson, et al. v. The State of North Carolina, et al.	1. Motion to Admit Michael A. Rebell *Pro Hac Vice* 2. Campaign for Educational Equity, Teachers College, Columbia University's Motion for Leave to File Amicus Brief	1. Allowed **02/04/2015** 2. Allowed **02/04/2015**
384A14	Richardson, et al. v. The State of North Carolina, et al.	Def-Intervenor's Motion to Substitute Party	Allowed **02/10/2015**

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384A14	Richardson, et al. v. The State of North Carolina, et al.	Motion of Robert Orr to Appear as Counsel of Record	Allowed **02/11/2015**
385P14-2	State v. Joseph Edward Tucker	Def's *Pro Se* Motion for Appropriate Relief	Dismissed
386P13-2	Bryan Debaun v. Daniel Kuszaj, a/k/a D.J. Kuszaj, a Durham Police Officer in his Individual and Official Capacity; and City of Durham, N.C.	Plt's PDR Under N.C.G.S. § 7A-31 (COA12-1520-2)	Denied **Ervin, J., recused**
400P14-3	State v. Dennis Moore	Def's *Pro Se* Motion for Petition for "Herein"	Dismissed
410A14	In the Matter of Lynn Marie Burke	Motion to Appear as Counsel of Record	Allowed **02/23/2015**
417P00-4	Frank Moore v. Attorney General, et al.	Def's *Pro Se* Petition for Writ of Habeas Corpus	Denied **02/23/2015**
418P14	Hans Kindsgrab v. State of N.C. Board of Barber Examiners	1. Petitioner's NOA Based Upon a Constitutional Question (COA13-1321) 2. Petitioner's PDR Under N.C.G.S. § 7A-31	1. Dismissed *ex mero motu* 2. Denied
419P14	Rutherford Electric Membership Corporation v. 130 of Chatham, LLC	1. Respondent's NOA Based Upon a Constitutional Question (COA14-134) 2. Respondent's PDR Under N.C.G.S. § 7A-31 3. Petitioner's Motion to Dismiss Appeal 4. Petitioner's Conditional PDR Under N.C.G.S. § 7A-31 5. Petitioner's Motion for Expedited Disposition of NOA and PDR	1. --- 2. Denied 3. Allowed 4. Dismissed as moot 5. Dismissed as moot
424P14-2	Stritzinger v. Bank of America, et al.	Plt's *Pro Se* Motion for a Petition for Review Under Original Jurisdiction	Dismissed

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427P14	State v. Larry Thomas McGee	1. Def's Motion for Temporary Stay (COA14-339) 2. Def's Petition for *Writ of Supersedeas* 3. Def's PDR Under N.C.G.S. § 7A-31	1. Allowed **11/25/2014** Dissolved **03/05/2015** 2. Denied 3. Denied
428P14	State v. Jerry Lee Pittman	Def's *Pro Se* Motion for PDR (COAP14-719)	Dismissed
432P14	State v. Neil Stanley Page, Jr.	Def's PDR Under N.C.G.S. § 7A-31 (COA14-16)	Denied
444P09-5	State v. Charles Gene Rogers	Def's *Pro Se* Motion for Appointment of Counsel	Denied
447P02-3	Edward McCrae v. State	Def's *Pro Se* Motion for PDR	Dismissed
450P14	State v. Matthew Smith Shepley	Def's PDR Under N.C.G.S. § 7A-31 (COA14-390)	Denied
454P14	State v. Karsten Eugene Turner	Def's PDR Under N.C.G.S. § 7A-31 (COA14-318)	Denied
461P14	State v. Billy Frank Larkin	Def's PDR Under N.C.G.S. § 7A-31 (COA14-443)	Denied
463P14	David C. Faustin v. North Carolina Building Code Council	1. Plt's PDR Under N.C.G.S. § 7A-31 (COA14-82) 2. Plt's Motion to Supplement the Record	1. Denied 2. Dismissed as moot
464P14	State v. Jarmal Flood	1. Def's PDR Under N.C.G.S. § 7A-31 (COA14-179 2. State's Conditional PDR Under N.C.G.S. § 7A-31	1. Denied 2. Dismissed as moot
466PA11-3	State v. Heather Rochelle Surratt	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA14-202) 2. Def's PDR Under N.C.G.S. § 7A-21 3. State's Motion to Dismiss Appeal	1. --- 2. Dismissed 3. Allowed **Ervin, J., recused**
467P14	State v. Andrew Grady Davis	Def's PDR Under N.C.G.S. § 7A-31 (COA14-443)	Denied

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470P14	N.C. Department of Public Safety v. Carrie J. Tucker	1. State's PDR Prior to a Determination of the COA (COA14-1308) 2. State's Motion for Consolidation	1. Denied 2. Dismissed as moot **Ervin, J., recused**
473P14	State v. Terry Dean Spivey	1. Def's *Pro Se* Motion for Notice of Appeal (COA13-656) 2. Def's *Pro Se* Petition for Writ of Certiorari to Review Decision of N.C. COA 3. Def's *Pro Se* Petition for Writ of Habeas Corpus	1. Dismissed *ex mero motu* 2. Denied 3. Denied 0**2/25/2015**
475P14-2	State v. Reginald U. Fullard	Def's *Pro Se* Motion for Reconsideration with Additional Evidence	Dismissed
478P14	State v. Joe Louis Petty, Jr.	1. Def's NOA Based Upon A Constitutional Question (COA14-641) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed
493P10-2	State v. Elijah Shane Clary	Def's *Pro Se* Motion for Recision of Contract	Dismissed
525P13-2	State v. Dennis O'Keith Blackwell	Def's *Pro Se* Motion to Appeal Complaint Filed with the N.C. Judicial Standards Commission	Dismissed

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005PA15	Commscope Credit Union v. Butler & Burke, LLP, a North Carolina Limited Liability Partnership v. Barry D. Graham, et al.	1. Motion to Admit Richard A. Simpson *Pro Hac Vice* 2. Motion to Admit Ashley E. Eiler *Pro Hac Vice*	1. Allowed **04/02/2015** 2. Allowed **04/02/2015** **Beasley, J., recused**
005PA15	Commscope Credit Union v. Butler & Burke, LLP, a North Carolina Limited Liability Partnership v. Barry D. Graham, et al.	North Carolina Chamber's Motion for Leave to File Amicus Brief	Allowed **04/06/2015** **Beasley, J., recused**
005PA15	Commscope Credit Union v. Butler & Burke, LLP, a North Carolina Limited Liability Partnership v. Barry D. Graham, et al.	1. National Association of Boards of Accountancy's Motion for Leave to File Amicus Brief 2. NCACPA, AICPA, and Center for Audit Quality's Motion for Leave to File Amicus Brief 3. Chamber of Commerce of the United States of America's Motion for Leave to File Amicus Brief	1. Allowed **04/07/2015** 2. Allowed **04/07/2015** 3. Allowed **04/07/2015** **Beasley, J., recused**
006P15	State v. Major Woody Myers, Jr.	1. State's Motion for Temporary Stay (COA14-504) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. 7A-31	1. Denied **01/06/15** 2. Denied 3. Denied
008P15	Jonathan E. Walker v. North Carolina Bar	Plt's *Pro Se* Motion for Notice of Appellant's Request for Review of North Carolina Bar's Decision of Cases #14G0226 and #14G0227	Dismissed
010P15	Clifford Roberts Wheeless, III, MD v. Maria Parham Medical Center, Inc., et al.	1. Plt's NOA Based Upon a Constitutional Question (COA14-612) 2. Plt's PDR Under N.C.G.S. § 7A-31 3. Def's Motion to Dismiss Appeal 4. Def's Motion to Dismiss PDR	1. — 2. Denied 3. Allowed 4. Dismissed as moot **Ervin, J., recused**
011P15	Glenn R. Wilmoth v. Gilbert W. Hemric and Van W. Hemric	Plt's PDR Under N.C.G.S. § 7A-31 (COA14-459)	Denied **Ervin, J., recused**

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012P15	State v. Bonrick Lee Barksdale	1. Def's *Pro Se* NOA Based Upon a Constitutional Question (COA14-595) 2. Def's *Pro Se* PDR Under N.C.G.S. § 7A-31	1. Dismissed *ex mero motu* 2. Denied
013P15-2	George T. Powell, Jr. v. George R. Brown, et al.	Plt's *Pro Se* Motion for Reconsideration	Dismissed
015P15	State v. Jaired Antonio Jones	Def's PDR Under N.C.G.S. § 7A-31 (COA14-463)	Denied
016P15	State v. William Friend, III	Def's PDR Under N.C.G.S. § 7A-31 (COA14-336)	Denied
020P15	State v. Susan Denise Shaw	1. Def's Motion for Temporary Stay (COA14-124) 2. Def's Petition for *Writ of Supersedeas* 3. Def's PDR Under N.C.G.S. § 7A-31	1. Allowed **01/15/15** Dissolved **04/09/2015** 2. Denied 3. Denied
022PA14	Thomas C. Wetherington v. North Carolina Department of Public Safety (FKA N.C. Department of Crime Control and Public Safety); North Carolina Highway Patrol	Joint Motion to Supplement the Record	Allowed **Ervin, J., recused**
024P15	State v. Juan Carlos Benitez	1. State's Motion for Temporary Stay (COA14-542) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR 4. State's Petition for Writ of *Certiorari* to Review Order of COA	1. Allowed **01/16/2015** 2. Allowed 3. Allowed 4. Dismissed as moot
027P15	State v. William Earl Huffstetler	1. Def's NOA Based Upon a Constitutional Question (COA14-727) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed

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028P15	The Town of Black Mountain and The County of Buncombe, North Carolina v. Lexon Insurance and Bond Safeguard Insurance Company	Defs' PDR Under N.C.G.S. § 7A-31 (COA14-740)	Denied
040P15	State v. Napoleon Junior Rankins	1. Def's *Pro Se* PWC to Review Order of Superior Court of Guilford County 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Allowed 3. Dismissed as Moot
042P15	State v. Reginald U. Fullard	1. Def's *Pro Se* PWC to Review Order of Superior Court of Forsyth County 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Allowed 3. Dismissed as moot
043P15	State v. Reginald U. Fullard	1. Def's *Pro Se* PWC to Review Order of Superior Court of Forsyth County 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Allowed 3. Dismissed as moot
044P15	Jo Ann Ward v. Mark E. Fogel and William B. Wright, Jr., as Co-Trustees under certain trust agreements dated February 1, 2005 and January 1, 2006, et al.	Plt's PDR Under N.C.G.S. § 7A-31 (COA14-417)	Denied
046P08-2	State v. Rodney Christopher Craig	1. Def's *Pro Se* PWC to Review Order of Superior Court of Mecklenburg County 2. Def's P*ro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Allowed 3. Dismissed as moot
047P15	Sherie Powell v. Emily Christopherson and Unnamed Insurance Company	Def Christopherson's PDR Under N.C.G.S. § 7A-31 (COA14-659)	Denied

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055P02-13	State v. Henry Ford Adkins	Def's *Pro Se* Motion for PDR	Denied
056P15	The Currituck Club Property Owners Association, Inc. v. Mancuso Development, Inc.	Plt's PDR Under N.C.G.S. § 7A-31 (COA14-476)	Denied
057P15	In the Matter of O.K.D., G.M.D., I.W.D.	Respondent-Mother's PDR Under N.C.G.S. § 7A-31 (COA14-755)	Denied
059P15	State v. Burnice Antwon Hinnant, Jr.	1. Def's NOA Based Upon a Constitutional Question (COA14-599) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed
060P15	In the Matter of David P. Hall	1. Petitioner's NOA Based Upon a Constitutional Question (COA14-435) 2. Petitioner's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed **Ervin, J., recused**
061P15	In the Matter of J.K.P.	Respondent-Mother's PDR Under N.C.G.S. § 7A-31 (COA14-756)	Denied
062P15	Mary Lacey and Jonathan Lucas v. Bonnie Kirk, Individually and as Attorney-In-Fact, Bonnie Kirk as Trustee of the Mary Frances Cochran Longest Testamentary Trust, and Bonnie Kirk as Executrix of the Estate of Mary Frances Cochran Longest	1. Def's Motion for Temporary Stay (COA14-688) 2. Def's Petition for *Writ of Supersedeas* 3. Def's PDR Under N.C.G.S. § 7A-31	1. Allowed **03/13/2015** Dissolved **04/09/2015** 2. Denied 3. Denied **Ervin, J., recused**
063P15	State v. Isidro Garcia Hernandez	1. Def's *Pro Se* Motion for NOA (COAP14-731) 2. Def's *Pro Se* Motion for PDR 3. Def's *Pro Se* PWC to Review Order of the COA	1. Dismissed *ex mero motu* 2. Dismissed 3. Dismissed

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066P15	State v. Thomas Willoughby	1. Def's PWC to Review Order of COA 2. Def's PWC to Review Order of Superior Court of Onslow County	1. Dismissed 2. Dismissed **Jackson, J., recused**
069P15	State v. Jason Keith Williford	Def's PDR Under N.C.G.S. § 7A-31 (COA14-50)	Denied
072P15	State v. Tyrone Lamonia Exum	Def's *Pro Se* PWC to Review Order of Superior Court of Lenoir County	Denied
073P15	State v. John Edward Rogers	Def's *Pro Se* Petition for Writ of *Certiorari* to Review Order of COA (COAP15-9)	Dismissed
074P15	State v. Gary Lee Wells, Sr.	1. Def's *Pro Se* PWC to Review Order of Superior Court of Randolph County 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis*	1. Dismissed 2. Allowed
075P15	State v. Travis L. Wilkins	Def's *Pro Se* Petition for *Writ of Mandamus*	Dismissed
078P15	State v. Jonathan Michael Runyon	Def's PDR Under N.C.G.S. § 7A-31 (COA14-817)	Denied
080A13-2	State v. Timothy Charles Wilkes	1. Def's PWC To Review Order of the COA (COA14-307) 2. Def's PWC to Review Order of the Superior Court of Moore County 3. Def's Motion to Appoint Counsel 4. State's Motion to Amend Response to PWC	1. Dismissed 2. Dismissed 3. Denied 4. Allowed
081P15	Stephanie L. Needham, Individually and as Guardian *Ad Litem* for John Doe, Jane Doe, and June Doe v. Roy Alan Price	Def's PDR Under N.C.G.S. § 7A-31 (COA14-706)	Allowed
085P15	State v. Lashon Kentrell Fairley	1. Def's *Pro Se* Motion for Mandamus 2. Def's *Pro Se* Motion for Appointment of Counsel	1. Denied 2. Dismissed as moot

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086A12	State v. Danny Robbie Hembree, Jr.	1. Def's Motion for Appropriate Relief 2. Def's Motion to Remand for Evidentiary Hearing	1. Dismissed as moot 2. Dismissed as moot **Ervin, J., recused**
086P15	State v. Charles Edwards McCrae	Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA14-790)	Dismissed without prejudice
087P15	Sandra S. Cowart, Individually and as Trustee Under the Sandra S. Cowart Living Trust, Date July 1. 2004 v. Bank of America, N.A., Shapiro & Ingle, LLP, and Cornish Law, PLLC	1. Respondent's *Pro Se* Motion for Temporary Stay (COAP15-124) 2. Respondent's *Pro Se* Petition for Writ of Supersedeas 3. Respondent's *Pro Se* PWC	1. Denied **03/05/2015** 2. Denied **03/05/2015** 3. Denied
088P15	Mason W. Hyde v. State of North Carolina	Def's *Pro Se* Petition for *Writ of Habeas Corpus*	Denied **03/06/2015**
089P15	State v. Jean Arthur Darcelien	1. Def's Motion for Temporary Stay 2. Def's Petition for *Writ of Supersedeas*	1. Allowed **03/06/2015** 2.
090P15	State v. Demario Lamont Snead	1. State's Motion for Temporary Stay (COA14-940) 2. State's Petition for Writ of Supersedeas 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **03/09/2015** 2. 3.
091P14-2	State v. Salim Abdu Gould	1. Def's *Pro Se* PWC to Review Order of Superior Court of Bertie County 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Motion for Appeal 4. Def's *Pro Se* Petition for *Writ of Mandamus* 5. Def's *Pro Se* Motion for *Writ of Coram Nobis*	1. Dismissed 2. Allowed 3. Denied 4. Denied 5. Denied
093A15	Town of Boone v. North Carolina and County of Watauga	1. State's Motion for Temporary Stay 2. State's Petition for *Writ of Supersedeas*	1. Special Order **03/19/2015** 2. Special Order **03/19/2015**

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094P15	State v. Steve D. Morrison	Def's *Pro Se* PWC to Review Order of COA (COAP15-17)	Dismissed
095P15	State v. Lance Antwan Moses	Def's *Pro Se* Petition for *Writ of Mandamus*	Dismissed
097P15	State v. Chowan Anthony Williams	Def's *Pro Se* Petition for *Writ of Mandamus*	Denied
098P15	In re James A. Austin	Def's *Pro Se* Application for Writ of Mandamus Under N.C.G.S. § 7A-32(b)	Dismissed
099P15	State v. Jonathan Lavon Friend	Def's *Pro Se* Motion for Petition for Review (COAP15-29)	Dismissed
104P15	State v. Jermaine Antoine Cade	Def's *Pro Se* NOA Based Upon a Constitutional Question (COA14-785)	Dismissed *ex mero motu*
105P15	Sandra S. Blair v. James H. Blair	Def's PDR Under N.C.G.S. § 7A-31 (COA14-887)	Denied
113A15	Patrick L. McCrory, et al. v. Philip E. Berger, et al.	1. Governors' Motion for Expedited Hearing 2. Motion to Appear on Behalf of Governor Patrick L. McCrory as Legal Counsel	1. Special Order **03/26/2015** 2. Allowed **04/01/2015**
119P15	In the Matter of N.T.	1. Petitioner's Motion for Temporary Stay (COA14-974) 2. Petitioner's Petition for *Writ of Supersedeas*	1. Allowed **04/01/2015** 2.
124P15	State v. Michael Scott Hamilton	1. State's Motion for Temporary Stay 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **04/06/2015** 2. 3.
198P14	Suzie Jane Burakowski v. Steven Allen Burakowski	Plaintiff-Appellant's PDR Under N.C.G.S. § 7A-31 (COA13-986)	Denied
269P14	Elizabeth Hinshaw v. John Kuntz	Def's PDR Under N.C.G.S. § 7A-31 (COA13-1184)	Allowed
280A14-2	In the Matter of J.C. and J.C.	1. Respondent-Mother's PDR Under N.C.G.S. § 7A-31 (COA14-79) 2. Guardian *Ad Litem's* Motion to Withdraw and Substitute Attorney	1. Denied 2. Dismissed as moot

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317P14	State v. Rodney Nigee Pledger Taylor	1. Def's PDR Under N.C.G.S. § 7A-31 (COA14-21) 2. State's Conditional PDR Under N.C.G.S. § 7A-31	1. Allowed 2. Allowed
323A92-9	Charles Alonzo Tunstall v. Lumberton Correctional Health Care Provider(s)	1. Plt's *Pro Se* Motion for NOA (COAP15-156) 2. Plt's *Pro Se* PWC to Review Order of the COA	1. Dismissed *ex mero motu* 2. Denied
330P14	Keen Lassiter, as Guardian Ad Litem for Jakari Baize, a minor v. The North Carolina Baptist Hospitals, Incorporated, et al.	Defs' PDR Under N.C.G.S. § 7A-31 (COA14-165)	Allowed
346P14	State v. Russell Edward Murray	Def's PDR Under N.C.G.S. § 7A-31 (COA13-1207)	Denied **Ervin, J., recused**
356P14	In the Matter of K.R.M., K.A.L.M.	Respondent-Mother's PDR Under N.C.G.S. § 7A-31 (COA14-248)	Denied **Ervin, J., recused**
358P14	State v. Jerry D. Surratt II	1. Def's *Pro Se* PWC to Review Order of Superior Court of Forsyth County 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Petition to Appoint Counsel	1. Dismissed 2. Allowed 3. Dismissed as moot
366P14	State v. Jesse Curtis Sharpe, II	Def's *Pro Se* PWC to Review Order of Superior Court of Person County	Dismissed
374P13-3	State v. Marvin Wade Millsaps	1. Def's *Pro Se* Motion for Discretionary Review *Writ of Certiorari* Dated 7 March 2015 2. Def's *Pro Se* Motion for *Writ of Certiorari*/Discretionary Review Dated 10 March 2015	1. Dismissed 2. Dismissed **Ervin, J., recused**

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386P14	Trillium Ridge Condominium Association, Inc. v. Trillium Links & Village, LLC; Trillium Construction Company, LLC; Shamburger Design Studio, P.C.; Shamburger Design, Inc. (FKA Shamburger Design Studio, Inc.); S.C. Culbreth, Jr.; and Gregory A. Ward	1. Defs' (S.C. Culbreth, Jr. and Gregory A. Ward) PDR Under N.C.G.S. § 7A-31 (COA14-183) 2. Def's (Trillium Construction Company, LLC) PDR Under N.C.G.S. § 7A-31 3. Def's (Trillium Links & Village, LLC) PDR Under N.C.G.S. § 7A-31 4. Plt's Conditional PDR Under N.C.G.S. § 7A-31 5. Plt's Conditional PDR Under N.C.G.S. § 7A-31	1. Denied 2. Denied 3. Denied 4. Dismissed as Moot 5. Dismissed as Moot **Ervin, J., recused**
390P14	Kim Casola, Antonio Casola, A Casola Motorsports, LLC, d/b/a Tri-County Motor Speedway v. Caldwell County, North Carolina	1. Plt's PDR Under N.C.G.S. § 7A-31 (COA14-177) 2. Def's Motion for Leave to Amend Response to PDR	1. Denied 2. Allowed
404P14	State v. Creig Wiand Bryant	Def's PWC to Review Decision of the COA (COA13-1384)	Denied **Ervin, J., recused**
406P14	Lifestore Bank, f/k/a AF Bank v. Mingo Tribal Preservation Trust Dated January 4, 1993. et al.	1. Def's PDR Under N.C.G.S. § 7A-31 (COA14-46) 2. Def's Motion to Supplement PDR	1. Denied 2. Allowed **Ervin, J., recused**
407P14-2	State v. Dwain Cornelius Ferrell	1. Def's *Pro Se* Motion for Petition to Amend 2. Def's *Pro Se* PWC to Review Order of the COA (COA14-742)	1. Dismissed 2. Dismissed
416P14	State v. Santonio Thurman Jenrette	1. Def's NOA Based Upon a Constitutional Question (COA13-1353) 2. Def's PDR Under N.C.G.S. § 7A-31	1. Dismissed *ex mero motu* 2. Denied
420P14	State v. William Anthony Shown	1. Def's *Pro Se* PWC to Review Order of Superior Court of Guilford County 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed without prejudice 2. Allowed 3. Dismissed as moot

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422P14	Paula K. Gregory, Administratrix of the Estate of Daryl Tyrone Gregory, Jr. v. Old Republic Home Protection Company, Inc.	Plt's PDR Under N.C.G.S. § 7A-31 (COA13-1439)	Denied
430P14	Lamar Alphonso Mack v. Erwin Carmichael, Roy Cooper, and State of North Carolina	1. Petitioner's *Pro Se* Motion for Notice and 2. Petition for Joinder of Claims Seeking Inquiry into Restraints on Liberty	1. Dismissed 2. Dismissed
434P14	State v. Anthony Scott	Def's PDR Under N.C.G.S. § 7A-31 (COA14-450)	Denied
436P14	State v. Matthew Hagert Salentine	Def's PDR Under N.C.G.S. § 7A-31 (COA14-63)	Denied
438P14	State v. Sergio M. Borrayo	Def's *Pro Se* Motion for PDR (COAP14-819)	Dismissed
440P14	State v. Joshua Winkler	1. State's Motion for Temporary Stay (COA14-442) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **12/04/2014** 2. Allowed 3. Allowed
441P14	Helena Marjorie Safron v. Mary Elaine Council	Plt's PDR Under N.C.G.S. § 7A-31 (COA14-288)	Denied
442P14	State v. Travis Markee Lennon	1. State's Motion for Temporary Stay (COA14-354) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **12/05/2014** Dissolved **04/09/2015** 2. Denied 3. Denied
449P11-11	State v. Charles Everette Hinton	1. Petitioner's *Pro Se* Motion for Notice 2. Petitioner's *Pro Se* Petition for *Writ of Mandamus*	1. Dismissed 2. Denied
451P14-2	State v. Kevin Kennedy Gilchrest	Def's *Pro Se* Motion to Dismiss	Dismissed

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453P14	State v. William Keith Davis	1. State's Motion for Temporary Stay (COA14-575) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **12/16/2014** Dissolved **04/09/2015** 2.Denied 3. Denied **Ervin, J., recused**
455P14	State v. Reginald Fullard	1. Def's *Pro Se* PWC to Review Order of Superior Court of Forsyth County 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Allowed 3. Dismissed as moot
458P14	State v. James Earl Parker, Jr.	1. State's Motion for Temporary Stay (COA14-412) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31 4. Def's Motion to Deem Response Timely Filed	1. Allowed **12/19/14** Dissolved **04/09/2015** 2. Denied 3. Denied 4. Allowed
459P14	Bulent Bediz v. Capital Facilities Foundation, Inc.	1. Plt's PDR Under N.C.G.S. § 7A-31 (COA14-421) 2. Plt's Motion that PDR be Deemed Filed as of December 9, 2014 3. Plt's Motion in the Alternative that PDR be treated as a PWC	1. Dismissed 2. Denied 3. Denied
460P14	Mayford Wyatt v. Haldex Hydraulics and Sentry Insurance	1. Defs' Motion for Temporary Stay (COA14-335) 2. Defs' Petition for *Writ of Supersedeas* 3. Defs' PDR Under N.C.G.S. § 7A-31	1. Allowed **12/22/2014** Dissolved **04/09/2015** 2. Denied 3. Denied
462A14	Aaron Byrd and Eric Coombs v. Franklin County, North Carolina	1. Petitioners' NOA Based Upon a Dissent (COA13-157) 2. Respondent's PDR as to Additional Issues	1. --- 2. Denied

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462A14	Aaron Byrd and Eric Coombs v. Franklin County, North Carolina	Motion by Robin T. Currin to Withdraw as Counsel	Allowed
465P14	State v. Kawana Spruill and Richard Conoley Chapman	Defs' PDR Under N.C.G.S. § 7A-31 (COA14-369)	Denied
468P14	State v. Ryan Albert Cox	1. Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA14-692) 2. Def's *Pro Se* Petition in the Alternative for Writ of Certiorari to Review Order of Superior Court of Henderson County	1. Denied 2. Denied
471P14	John Price v. State of N.C. Office of the State Auditor	1. State's PDR Under N.C.G.S. § 7A-31 (COA14-375) 2. State's Motion for Consolidation 3. Petitioner's Motion to Dismiss PDR 4. Respondent's Motion for Leave to File Reply Brief to Response to Motion to Dismiss 5. Motion to Appear	1. 2. Denied **04/09/2015** 3. 4. 5. **Ervin, J., recused**
474P14	State v. Corey Deon Floyd	1. State's Motion for Temporary Stay (COA14-533) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **12/31/2015** 2. Allowed 3. Allowed **Ervin, J., recused**
476P14	State v. James M. Roberts	1. Def's Motion for Temporary Stay (COA14-175) 2. Def's Petition for *Writ of Supersedeas* 3. Def's PDR Under N.C.G.S. § 7A-31	1. Allowed **12/31/2014** Dissolved **04/09/2015** 2. Denied 3. Denied **Ervin, J., recused**
538P00-3	State v. Smittie James	Def's PWC to Review Order of Superior Court of Northampton County	Dismissed

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568A03-2	State v. Larry Stubbs	1. State's Motion for Temporary Stay 2. State's Petition for *Writ of Supersedeas* 3. State's PWC to Review Order of COA	1. Dismissed 09/16/2014 2. Dismissed as moot 3. Dismissed as moot **Ervin, J. and Beasley, J., recused**

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003P08-3	In the Matter of: Melvin Davis and Licurtis Reels v. Asa Buck, Sheriff, Carteret County	Petitioners' *Pro Se* Petition for *Writ of Habeas Corpus*	Denied **06/04/2015**
004P15	State v. Robert Teon Ingram	Def's PDR Under N.C.G.S. § 7A-31 (COA14-406)	Denied **Ervin, J., recused**
014P12-2	State v. Jarrell Damont Wilson	1. Def's Motion for Temporary Stay (COA14-638) 2. Def's Petition for *Writ of Supersedeas* 3. Def's PDR Under N.C.G.S. § 7A-31 4. Def's Petition for *Writ of Certiorari* to Review Order of COA	1. Denied **05/21/2015** 2. Denied 3. Dismissed 4. Dismissed
014P15	In the Matter of Foreclosure of a Deed of Trust Executed by Courtney M. Powell aka Courtney Powell (Present Record Owner(s): Courtney M. Powell) in the Original Amount of $107,813.00 Dated November 12, 2008, Recorded in Book 6092 Page 635 Durham County Registry Substitute Trustee Services, Inc., Substitute Trustee	Respondent's PDR Under N.C.G.S. § 7A-31 (COA14-498)	Denied
016P07-6	State v. Joey Duane Scott	1. Def's *Pro Se* PWC to Review Order of Superior Court of Guilford County 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Allowed 3. Dismissed as moot

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022PA14	Wetherington v. North Carolina Department of Public Safety	1. State Employees Association of North Carolina Motion for Leave to file *Amicus* Brief 2. Professional Fire Fighters and Paramedics of North Carolina's Motion for Leave to File *Amicus* Brief 3. National Association of Police Organization's Motion for Leave to File *Amicus* Brief 4. Southern States Police Benevolent Association and North Carolina Police Benevolent Association's Motion for Leave to File *Amicus* Brief	1. Allowed **04/20/2015** 2. Allowed **04/20/2015** 3. Allowed **04/20/2015** 4. Allowed **04/20/2015**
022PA14	Wetherington v. North Carolina Department of Public Safety	1. *Amicus* Parties' Motion to Admit Christina L. Corl *Pro Hac Vice* 2. *Amicus* Parties' Motion to Admit Larry H. James *Pro Hac Vice*	1. Allowed **04/15/2015** 2. Allowed **04/15/2015**
022PA14	Wetherington v. North Carolina Department of Public Safety	Petitioner's Motion to Allow *Amicus Curiae* SEANC to Participate in Oral Argument	Denied **05/18/2015**
022P15	State v. Wade Leon Shaw	Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of COA (COAP14-921)	Denied
026P15	In the Matter of: State v. Bobby Darrell Hoxit, Sr.	1. State's Motion for Temporary Stay 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **01/20/2015** Dissolved **06/10/2015** 2. Denied 3. Denied **Ervin, J., recused**
029P15	State v. Darrett Crockett	1. Def's PDR Under N.C.G.S. § 7A-31 (COA14-403) 2. Def's Motion to Amend PDR	1. Allowed 2. Allowed

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032P15	Eastern Carolina Regional Housing Authority v. Sherbreda Lofton	1. Plt's PDR Under N.C.G.S. § 7A-31 (COA14-212) 2. Raleigh Housing Authority's Conditional Motion for Leave to File *Amicus* Brief 3. Def's Motion to Amend Response to PDR 4. Plt's Motion to Amend PDR	1. Allowed 2. Allowed 3. Allowed 4. Allowed **Ervin, J., recused**
033P15	Charlotte Pavilion Road Retail Investment, L.L.C., and WLA Enterprises, Inc. v. North Carolina CVS Pharmacy, LLC; Jeffrey Carpenter; Carpenter Investment Properties, LLC; Suburban Gardens Incorporated; and Sonny Boy Properties, LLC	1. Defs' (North Carolina CVS Pharmacy, LLC and Sonny Boy Properties, LLC) PDR Under N.C.G.S. § 7A-31 (COA14-658) 2. Plts' Conditional PDR Under N.C.G.S. § 7A-31	1. Denied 2. Denied **Ervin, J., recused**
036P15	State v. Eric Everett Blackmon	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA14-594) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed
037P15	State v. Kelly Winton Pierce	Def's PDR Under N.C.G.S. § 7A-31 (COA14-574)	Denied
039P15	Gwendolyn Gillins Fennell Wimes v. North Carolina Board of Nursing	Petitioner's PDR Under N.C.G.S. § 7A-31 (COA14-525)	Denied **Ervin, J., recused** **Jackson, J., recused**
040P15-2	State v. Napoleon Junior Rankins	Def's *Pro Se* Motion for Appeal Entry Notice	Dismissed
042P15-2	State v. Reginald U. Fullard	Def's *Pro Se* Motion for Appeal Orders Entered 15 April 2015	Dismissed
043P15-2	State v. Reginald U. Fullard	Def's *Pro Se* Motion for Appeal Orders Entered in Case 43P15-1	Dismissed

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045P15	State v. O'Reynold Jamaar Lennon	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA14-806) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed **Ervin, J., recused**
048P15	State v. Ronald Dewayne Deese, III	Def's PDR Under N.C.G.S. § 7A-31 (COA14-508)	Denied
051P15	Le Oceanfront, Inc., et al. v. Lands End of Emerald Isle Association, Inc.	Def's PDR Under N.C.G.S. § 7A-31 (COA14-287)	Denied
052P15	James Patrick Logan v. Charles Albert Morgan, et al.	Plt's PDR Under N.C.G.S. § 7A-31 (COA14-487)	Denied
054P15	State v. Christopher David Amyx	Def's PDR Under N.C.G.S. § 7A-31 (COA14-583)	Denied **Ervin, J., recused**
055P15	State v. James Edward Johnson	Def's PDR Under N.C.G.S. § 7A-31 (COA14-543)	Denied **Ervin, J., recused**
064P15	Tariq M. Khwaja v. Mohammed S. Khan and wife, Haseeb Akhtar, Mohammed Pervez Iqbal and wife, Irshad Begum	Plt's PDR Under N.C.G.S. § 7A-31 (COA14-728)	Denied
065P15	State v. Keith Antonio Barnett	1. State's Motion for Temporary Stay (COA14-447) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **02/06/2015** 2. Allowed 3. Allowed **Beasley, J., recused**

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

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070P15	Wayne Goodwin, as Commissioner of Insurance for the State of North Carolina v. CAGC Insurance Company v. North Carolina Insurance Guaranty Association v. North Carolina Self-Insurance Security Association	1. North Carolina Insurance Guaranty Association's PDR Under N.C.G.S. § 7A-31 (COA14-445) 2. North Carolina Self-Insurance Security Association's Conditional PDR Under N.C.G.S. § 7A-31	1. Denied 2. Dismissed as moot
077P15	In the Matter of M.G. and H.G.	1. Petitioner's Motion for Temporary Stay (COA14-934) 2. Petitioner's Petition for *Writ of Supersedeas* 3. Petitioner's PDR Under N.C.G.S. § 7A-31	1. Allowed **02/23/2015** Dissolved **06/10/2015** 2. Denied 3. Denied
079P15	State v. Barney Adrian Dunlap	1. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Decision of COA 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
080P15	State v. Van Lamar McKnight	Def's PDR Under N.C.G.S. 7A-31 (COA14-752)	Denied
081PA15	Stephanie Needham v. Roy Alan Price	Def's Motion for Extension of Time to File Appellant's Brief	Allowed **05/26/2015**
082P15	In the Matter of A.E.C.	1. Petitioner's Motion for Temporary Stay (COA14-854) 2. Petitioner's Petition for *Writ of Supersedeas* 3. Petitioner's PDR Under N.C.G.S. § 7A-31 4. Petitioner's Motion to Deem PDR Timely filed 5. Respondent-Father's Motion to Dismiss PDR	1. Allowed **02/25/2015** Dissolved **06/10/2015** 2. Denied 3. Denied 4. Allowed 5. Denied

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089P15	State v. Jean Arthur Darcelien	1. Def's Motion for Temporary Stay (COA14-582) 2. Def's Petition for *Writ of Supersedeas* 3. Def's PDR Under N.C.G.S. § 7A-31	1. Allowed **03/06/2015** Dissolved **06/10/2015** 2. Denied 3. Denied
091P15	Jerry Wilson and wife, Doris Wilson v. Conleys Creek Limited Partnership, a North Carolina Partnership, and Michael Cornblum	1. Defs' PDR Under N.C.G.S. § 7A-31 (COA14-823) 2. Defs' Motion for Leave to Amend PDR 3. Defs' Second Motion for Leave to Amend PDR	1. Denied 2. Allowed 3. Denied
093A15	Town of Boone v. State of North Carolina and County of Watauga	Plt's Motion to Strike the County's Brief	Special Order
103P15	Jeffrey Bowden v. Dwayne Maurice Young, Coastal Plains Restaurants, LLC, and First Liberty Insurance Corporation	1. Plt's Notice of Appeal Based Upon a Constitutional Question 2. Plt's PDR Under N.C.G.S. § 7A-31 (COA14-819) 3. Def's (First Liberty) Motion to Dismiss Appeal 4. Def's (First Liberty) Motion to Strike 5. Plt's Motion to Dismiss Frivolous Interlocutory Appeal and for Sanctions	1. — 2. Denied 3. Allowed 4. Allowed **04/30/2015** 5. Stricken *ex mero motu* **04/30/2015**
104P15	State v. Jermaine Antoine Cade	1. Def's *Pro Se* Notice of Appeal Based Upon a Constitutional Question (COA14-785) 2. Def's *Pro Se* PDR Under N.C.G.S. § 7A-31	1. Dismissed *ex mero motu* **04/09/2015** 2. Denied
106P15	Jennifer Elisabeth Martin v. Susan Raye Moreau, in her Individual Capacity, and George Noel Gentieu, in his Individual Capacity	1. Def's PDR Under N.C.G.S. § 7A-31 (COA14-811) 2. Plt's Conditional PDR Under N.C.G.S. § 7A-31	1. Denied 2. Dismissed as moot

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108P14-2	Duke Energy Carolinas, LLC v. Herbert A. Gray, Defendant/Third-Party Plaintiff v. John Wieland Homes and Neighborhoods of the Carolinas, Inc., Third Party Defendant and Builder Support Services of the Carolinas, Inc. f/k/a John Wieland Homes and Neighborhoods of the Carolinas, Inc., Fourth-Party Plaintiff v. Yarborough-Williams & Houle, Inc., Lucas-Forman, Inc., and Carter Land Surveyors & Planners, Inc., Fourth-Party Defendants	1. Plt's PDR Under N.C.G.S. § 7A-31 (COA14-283) 2. Piedmont Natural Gas Company, Inc. and Public Service Company of North Carolina, Inc. d/b/a PSNC Energy's Conditional Motion for Leave to File Amicus Brief 3. North Carolina Electric Membership Corporation and the North Carolina Association of Electric Cooperatives' Conditional Motion for Leave to File Amicus Brief 4. Def/Third- Party Plt (Herbert A. Gray), Third-Party Def, Fourth-Party Plt (Builder Support Services), and Fourth-Party Def (Yarborough-Williams)'s Conditional PDR Under N.C.G.S. § 7A-31	1. Allowed 2. Allowed 3. Allowed 4. Allowed
108P15	Michael C. Piro v. Karen Shapiro Piro (Now Karen Shapiro)	1. Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 2. Def's *Pro Se* Motion for Temporary Stay 3. Def's *Pro Se* Petition for *Writ of Supersedeas*	1. 2. Allowed **05/11/2015** 3.
110P15	State v. Terrance Newkirk	Def's *Pro Se* Petition for *Writ of Mandamus*	Dismissed
111P15	ACC Construction, Inc. v. Suntrust Mortgage, Inc., et al.	Plt's PDR Under N.C.G.S. § 7A-31 (COA14-789)	Denied
113A15	Patrick L. McCrory, et al. v. Philip E. Berger, et al.	Def's Motion for Leave to File Amended Brief	Allowed **05/07/2015**
113A15	Patrick L. McCrory, et al. v. Philip E. Berger, et al.	1. Defendant-Appellants' Motion for Enlargement of Time Allowed for Oral Argument 2. *Amici*'s (Carolina AGC, et al.) Motion for Leave to Participate at Oral Argument	1. Denied 2. Allowed

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113A15	Patrick L. McCrory, et al. v. Philip E. Berger, et al.	Cherie Berry, N.C. Commissioner of Labor; Wayne Goodwin, N.C. Commissioner of Insurance; Steve Troxler, N.C. Commissioner of Agriculture; and Beth A. Wood, C.P.A., State Auditor of N.C.'s Motion for Leave to File *Amicus* Brief	Special Order **05/28/2015**
113A15	Patrick L. McCrory, et al. v. Philip E. Berger, et al.	Janet Cowell, Treasurer's Motion to Withdraw Previous Motion to File *Amicus Curiae* Brief	Allowed **05/29/2015**
113A15	Patrick L. McCrory, et al. v. Philip E. Berger, et al.	Motion of the North Carolina Institute for Constitutional Law for Leave to File *Amicus Curiae* Brief	Allowed **06/10/2015**
114P15	State v. Slade Weston Hicks, Jr.	Def's Petition for *Writ of Certiorari* to Review Decision of COA (COA14-57)	Denied
115P15	In the Matter of Boyd J. Hicks	Def's *Pro Se* Petition for *Writ of Mandamus* (COAP15-234)	Dismissed
116P15	State v. Phillip Scott Baker	Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA14-260)	Denied
117P15	State v. Milton Carlos Jenkins	1. Def's *Pro Se* Motion for PDR (COAP15-143) 2. Def's *Pro Se* Petition in the Alternative for *Writ of Certiorari* to Review Order of COA 3. Def's *Pro Se* Motion for Petition to Amend Petition for *Writ of Certiorari*	1. Dismissed 2. Dismissed 3. Allowed
118P15	State v. Victor Adrian Gutierrez	1. Def's *Pro Se* Motion for PDR (COAP15-65) 2. Def's *Pro Se* Petition in the Alternative for *Writ of Certiorari* to Review Order of the COA	1. Dismissed 2. Dismissed
121P15	State v. Aggrey Winston Manning	1. Def's *Pro Se* Motion for PDR (COAP15-191) 2. State's Motion to Dismiss "PDR"	1. Dismissed 2. Dismissed as moot
122P15	State v. John Pate	1. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Decision of COA (COA14-464) 2. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of Court of Appeals	1. Denied 2. Denied **Ervin, J., recused**

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123P15	State v. Loranzo Square, III	1. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of COA (COAP15-181) 2. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Dismissed as moot
125P15	State v. Paul A. Fuller	Def's *Pro Se* Petition for *Writ of Mandamus* (COAP15-183)	Dismissed
129P15	State v. Marqueion Jamal Harrison	1. Def's *Pro Se* Motion for Appropriate Relief 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis*	1. Dismissed 2. Allowed
130P15	In re James R. Clark	Def's *Pro Se* Petition for *Writ of Mandamus*	Dismissed
131P15	State v. Daniel Walter Setzer	Def's PDR Under N.C.G.S. § 7A-31	Denied
135P15	State v. Leonard Eugene Joyner	Def's PDR Under N.C.G.S. § 7A-31 (COA14-957)	Denied
136P15	State v. Kevin Crawford Gunter	Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA14-942)	Denied
138P15	State v. Percy Edward Smith	Def's *Pro Se* Petition for *Writ of Mandamus* Under N.C.G.S. § 7A-32(b)	Dismissed
141P15	State v. Lamont Dashawn Lafoucade	1. Def's PDR Under N.C.G.S. § 7A-31 (COA14-820) 2. Def's Petition for *Writ of Certiorari* to Review Decision of COA	1. Denied 2. Denied
142P15	In re Jermain Covington	Def's *Pro Se* Petition for *Writ of Mandamus*	Dismissed
143P15	State v. Jacob Mark Spivey	1. State's Motion for Temporary Stay (COA14-1046) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **04/24/2015** 2. 3.
144P15	State v. Calvin Lewis Moore, Jr.	1. State's Motion for Temporary Stay 2. State's Petition for *Writ of Supersedeas* 3. State's PDR	1. Allowed **04/27/2015** 2. 3.

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147P15	State v. Donovan Richardson	Def's *Pro Se* Petition for *Writ of Mandamus*	Dismissed
148P15	Cecil L. Miller v. Torran Holloman	Plt's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA14-485)	Denied
151P15	State v. Timothy Prince	Def's *Pro Se* Petition for *Writ of Mandamus*	Dismissed
152P11-3	State v. Keith Leonardo Shropshire	1. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of Superior Court of Mecklenburg County 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Allowed 3. Dismissed as moot **Ervin, J., recused**
153P15	State v. Christopher Scott Byrd	Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA14-1087)	Denied
154P15	State v. Rickey G. Shore	Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of COA (COAP15-251)	Dismissed
155P15	State v. Franklin Marcus Grullon, Jr.	Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA14-104)	Denied
156A15	State v. Anna Laura Huckelba	1. State's Motion for Temporary Stay (COA14-916) 2. State's Petition for *Writ of Supersedeas*	1. Allowed **05/08/2015** 2.
165P15	State v. Nathaniel Paige Phillips	1. Def's Motion for Temporary Stay 2. Def's Petition for *Writ of Supersedeas*	1. Allowed **05/15/2015** 2.
166P15	State v. Michelle Lynn Bailey	1. Def's Motion for Temporary Stay (COA14-1151) 2. Def's Petition for *Writ of Supersedeas* 3. Def's PDR Under N.C.G.S. § 7A-31	1. Allowed **05/18/2015** 2. 3.
167P15	State v. Jonathon Johnson	1. Def's *Pro Se* Motion for Complaint Citing Violations of the Rules of Professional Conduct 2. Def's *Pro Se* Motion for Reappointment of Counsel	1. Dismissed 2. Dismissed

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172P15	State v. Mohammed Nadder Jilani	1. Def's *Pro Se* Petition for *Writ of Habeas Corpus* 2. Def's *Pro Se* Petition for *Writ of Mandamus*	1. Denied **05/27/2015** 2. Dismissed **05/27/2015**
173P15	State v. Juli Ann Williams	1. Def's Motion for Temporary Stay (COA14-1113) 2. Def's Petition for *Writ of Supersedeas* 3. Def's PDR Under N.C.G.S. § 7A-31	1. Allowed **05/26/2015** 2. 3.
179P14-2	State v. Torrey Dale Grady	U.S. Supreme Court Order Vacating and Remanding	Special Order
187P15	State v. Aleksandr Sergeyevich Kiselev	1. State's Motion for Temporary Stay 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31 (COA14-1020)	1. Allowed **06/08/2015** 2. 3.
194P07-2	State v. Lawrence Clay McGee	1. Def's *Pro Se* Motion for PDR (COAP15-248) 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Allowed 3. Dismissed as moot
201PA12-3	Margaret Dickson, et al. v. Robert Rucho, et al.	1. Order and Mandate from the Supreme Court of the United States 2. Plt's Motion for Expedited Schedule on Remand	1. Special Order **05/07/2015** 2. Special Order **05/07/2015**
208P14	State v. Colell B. Steele	1. Def's *Pro Se* Motion in Arrest of Judgment (COAP13-101) 2. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Dismissed as moot
227P08-3	State v. Sabas Ibarra	Def's *Pro Se* Petition for *Writ of Mandamus*	Dismissed
248P99-2	State v. Howard Cleveland, Jr.	Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of the COA	Dismissed
269PA14	Elizabeth Hinshaw v. John Kuntz	Joint Motion for Order Allowing Withdrawal of PDR	Allowed **04/21/2015**

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287P09-3	State v. Jonathan E. Walker, Sr.	1. Def's *Pro Se* Motion for Another Direct Appeal 2. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Dismissed as moot **Jackson, J., recused**
305P97-6	State v. Egbert Francis, Jr.	Def's *Pro Se* PWC to Review Order of COA (COAP15-255)	Denied
308P14	David Allen Tilley v. North Carolina Post-Release Supervisor Parole Commissioner, Paul Butler, Tony Rand, and Brett Ross and Amy Porter (Parole Officers)	1. Petitioner's *Pro Se* Motion for PDR (COAP14-361) 2. Petitioner's *Pro Se* Motion to Proceed *In Forma Pauperis*	1. Denied 2. Allowed
315PA13-2	State v. Travis Kenyel Sanders	Def's PDR Under N.C.G.S. § 7A-31 (COA14-532)	Denied
316P06-2	State v. Ian Aulden Campbell	1. Def's Petition for *Writ of Certiorari* to Review Order of Superior Court of Wake County 2. Def's Motion to Hold Petition for *Writ of Certiorari* in Abeyance	1. Dismissed 2. Dismissed as moot **Hudson, J., recused**
331P01-4	State v. Nicholas Nathaniel Cauley	1. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of Superior Court of Dare County 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Allowed 3. Dismissed as moot
354P13-2	State v. Steven R. Ramirez	Def's *Pro Se* Petition for *Writ of Mandamus*	Dismissed

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10 JUNE 2015

364P14	Daniel Joseph Truhan v. Susan P. Walston and David M. Walston, and Third-Party Plaintiff, Susan P. Walston v. North Carolina Farm Bureau Mutual Insurance Company, United Services Automobile Association, and Western Surety Company	1. Plt & Third Party Def's (Western Surety) PDR Under N.C.G.S. § 7A-31 (COA14-43)	1. Denied
		2. N.C. Association of Chiefs of Police's Motion for Leave to File *Amicus* Brief	2. Dismissed as moot
		3. N.C. Association of County Commissioners' Motion for Leave to File *Amicus* Brief	3. Dismissed as moot
		4. New Hanover County's Motion for Leave to File A*micus* Brief	4. Dismissed as moot
		5. Durham County's Motion for Leave to File *Amicus* Brief	5. Dismissed as moot
		6. City of Winston-Salem's Motion for Leave to File *Amicus* Brief	6. Dismissed as moot
		7. Pasquotank County's Motion for Leave to File *Amicus* Brief	7. Dismissed as moot
		8. Catawba County's Motion for Leave to File *Amicus* Brief	8. Dismissed as moot
		9. Third-Party Defs' (United Services Automobile Association & N.C. Farm Bureau) PDR Under N.C.G.S. § 7A-31	9. Denied
		10. Gaston County's Motion for Leave to File *Amicus* Brief	10. Dismissed as moot
		11. Town of Franklin's Motion for Leave to File *Amicus* Brief	11. Dismissed as moot
		12. Lincoln County's Motion for Leave to File *Amicus* Brief	12. Dismissed as moot
		13. Brunswick County's Motion for Leave to File *Amicus* Brief	13. Dismissed as moot
		14. N.C. Sheriff's Assoc. Motion for Leave to File *Amicus* Brief	14. Dismissed as moot
		15. Haywood County's Motion for Leave to File *Amicus* Brief	15. Dismissed as moot
		16. Macon County's Motion for Leave to File *Amicus* Brief	16. Dismissed as moot
370P14	State v. Donald Eugene Borders	Def's PDR Under N.C.G.S. § 7A-31 (COA13-1208)	Denied **Ervin, J., recused**

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10 JUNE 2015

373A14	Cape Fear River Watch, et al. v. N.C. Environmental Management Commission, et al.	1. Intervenor's Motion for Judicial Notice 2. Petitioners' Motion for Judicial Notice 3. Respondent's Motion for Extension of Time to File Response to Petitioners' Motion for Judicial Notice 4. Petitioners' Motion for Judicial Notice	1. Denied 2. Dismissed as moot 3. Allowed **12/02/2014** 4. Denied **Edmunds, J., recused**
388A10	State v. Andrew Darrin Ramseur (DEATH)	1. Def's Petition for *Writ of Certiorari* to Review Order of Superior Court of Iredell County 2. Def's Motion to Maintain Stay of Direct Appeal	1. 2. Allowed **06/10/2015**
396P14	State v. Johntia Luwonzia Barnette	Def's PDR Under N.C.G.S. § 7A-31 (COA14-308)	Denied
413A14	State v. Ronald Michael McCrary	1. State's Motion for Temporary Stay (COA13-1059) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31 4. Def's Notice of Appeal Based Upon a Dissent 5. Def's Petition for *Writ of Certiorari* to Review Decision of COA	1. Allowed **11/07/2014** 2. Allowed 3. Allowed 4. --- 5. Allowed
418P13-2	Hillery Boyce aka Charles Wharton v. Shelia Mitchell, State of North Carolina	Petitioner's Pro Se Petition for *Writ of Habeas Corpus*	Denied **04/23/2015**
426P14	State v. Torrence Wesley Peoples	Def's PDR Under N.C.G.S. § 7A-31 (COA14-416)	Denied **Ervin, J., recused**

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10 JUNE 2015

433P14	Cumberland County Hospital System, Inc., d/b/a Cape Fear Valley Medical Center v. North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section, et al.	Petitioner's PDR Under N.C.G.S. § 7A-31 (COA14-161)	Denied
439P14	State v. Malik Jaquez Walton	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA14-402) 2. Def's PDR Under N.C.G.S. § 7A-31 3. Def's Motion to Deem Notice of Appeal and PDR Timely Filed 4. Def's Petition in the Alternative for *Writ of Certiorari* to Review Decision of the COA	1. Dismissed *ex mero motu* 2. Denied 3. Denied 4. Denied
448P14	Cumberland County Hospital System, Inc., d/b/a Cape Fear Valley Medical Center v. North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section, et al.	Petitioner's PDR Under N.C.G.S. § 7A-31 (COA14-160)	Denied
449P14	State v. Derick Johnelle Miles	Def's PDR Under N.C.G.S. § 7A-31 (COA14-458)	Denied
455P14-2	State v. Reginald Fullard	Def's *Pro Se* Motion to Appeal All Orders Entered in 455P14-1	Dismissed
469P14	State v. James Cecil Pearce	1. Def's *Pro Se* Motion for Notice of Appeal 2. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Decision of COA (COA13-1359)	1. Dismissed *ex mero motu* 2. Denied **Ervin, J., recused**

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10 JUNE 2015

474P11-2	State v. Charles Vincent Hayes	1. Def's *Pro Se* Motion for Notice of Appeal (COAP14-841) 2. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of COA	1. Dismissed *ex mero motu* 2. Dismissed
493P10-3	State v. Elijah Shane Clary	1. Def's *Pro Se* Motion for PDR 2. Def's *Pro Se* Motion for Extension of Time 3. Def's *Pro Se* Motion for Notice of Intent to Seek Review	1. Denied 2. Dismissed as moot 3. Dismissed
510PA13	State v. Floyd Edward May, Sr.	Def's Motion to Take Judicial Notice of the Files of the Appellate Courts in the Case of State v. Roberts and State v. Bunch	Allowed **Ervin, J., recused**
597P06-2	Alfred Alphonza Wallace v. Lawrence Parsons	Petitioner's *Pro Se* Petition for *Writ of Habeas Corpus*	Denied **05/12/2015**

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22 JULY 2015

372A14	Hart, et al. v. The State of North Carolina, et al.	Intervenor-Defendants' Motion for Supplemental Relief Pursuant to this Court's *Writ of Supersedeas*	Special Order
384A14	Richardson, et al. v. The State of North Carolina, et al.	Plts' Motion to Supplement to Record on Appeal	Allowed
384A14	Richardson, et al. v. The State of North Carolina, et al.	Intervenor-Defendants' Motion for Supplemental Relief Pursuant to this Court's *Writ of Supersedeas*	Special Order

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21 AUGUST 2015

001A15	State v. Bo Anderson Taylor	1. State's Motion for Temporary Stay 2. State's Petition for *Writ of Supersedeas* 3. State's Notice of Appeal Based Upon a Dissent (COA14-490)	1. Allowed **01/02/15** 2. Allowed 3. — **Ervin, J., recused**
009P15	State v. Dexter Durane Henry	1. Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA14-561) 2. Def's P*ro Se* Motion to Proceed *In Forma Pauperis*	1. Denied 2. Allowed
013P11-2	State v. Tracy Lamont Clark	1. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of Superior Court of Rockingham County 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Allowed 3. Dismissed as moot
024P10-2	Joseph Michael Griffith v. Linda M. McGee, Chief Judge, North Carolina Court of Appeals	Petitioner's *Pro Se* Petition for Writ of Mandamus	Denied **Jackson, J., recused**
024PA15	State v. Juan Carlos Benitez	Def's Motion to Take Judicial Notice	Allowed
024PA15	State v. Juan Carlos Benitez	Def's Motion to Strike Paragraph in Defendant's New Brief for Inadvertent Inaccuracy	Allowed
025P15	TSG Finishing, LLC v. Keith Bollinger	1. Def's Motion for Temporary Stay 2. Def's Petition for *Writ of Supersedeas* 3. Def's PDR Under N.C.G.S. § 7A-31 (COA14-623)	1. Allowed **01/20/2015** Dissolved **08/20/2015** 2. Denied 3. Denied

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21 AUGUST 2015

034A15	Sammy R. Pruett, Plaintiff v. Joel D. Bingham and Jean's Bus Service, Inc., Defendants and Third-Party Plaintiffs v. Gregory Alan Wiggins, Matthew Brackett and Mountain Home Fire & Rescue Department, Inc., Third-Party Defendants	1. Defs' and Third-Party Plts' Notice of Appeal Based Upon a Dissent (COA14-191) 2. Defs' and Third-Party Plts' PDR as to Additional Issues	1. --- 2. Denied
040P15-3	State v. Napoleon Junior Rankin	1. Def's *Pro Se* Motion for Appointment of Counsel 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Motion for Notice of Appeal 4. Def's *Pro Se* Motion for Ineffective Assistance of Counsel	1. Dismissed as moot 2. Allowed 3. Dismissed *ex mero motu* 4. Dismissed
038P15	James Norman Richardson v. PCS Phosphate Company, Inc., Ace USA/ESIS, Zurich North America Insurance Co., Federal Insurance Company/Chubb Group, RSK Co. (k/n/a CNA), Specialty Risk Services, and Broadspire	Defs' (PCS Phospate Company, Inc. and Broadspire) PDR Under N.C.G.S. § 7A-31 (COA14-615)	Denied
042P15-3	State v. Reginald U. Fullard	1. Def's *Pro Se* Motion to Appeal 2. Def's *Pro Se* Motion for Order of Transcripts	1. Dismissed 2. Dismissed
043P15-3	State v. Reginald U. Fullard	1. Def's *Pro Se* Motion to Appeal 2. Def's *Pro Se* Motion for Order of Transcripts	1. Dismissed 2. Dismissed

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046P15	Carolina Marlin Club Marina Association, Inc. d/b/a Morehead-Beaufort Yacht Club v. Harry Preddy and Valerie Preddy	1. Defs' PDR Under N.C.G.S. § 7A-31 (COA14-377) 2. Plt's Conditional PDR Under N.C.G.S. § 7A-31	1. Denied 2. Dismissed as Moot **Ervin, J., recused**
056P14-2	Everette E. Kirby and wife, Martha Kirby, et al. v. North Carolina Department of Transportation	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA14-184) 2. Def's PDR Under N.C.G.S. § 7A-31	1. Dismissed *ex mero motu* 2. Allowed
058P15	Fred Wally, Lavon Benton, Don Crowe, and George Martocchio v. The City of Kannapolis, a North Carolina Municipal Corporation	1. Plts' PDR Under N.C.G.S. § 7A-31 (COA13-1425) 2. Plts' Motion to Amend PDR	1. Denied 2. Allowed **Ervin, J., recused**
076P15	State v. Cesario Zamora-Ramos	Def's *Pro Se* Motion for PDR (COA07-738)	Denied
083P15	Myra Lynne Combs v. Michael D. Robertson, Commissioner of North Carolina Division of Motor Vehicles	1. Petitioner's Notice of Appeal Based Upon a Constitutional Question (COA14-709) 2. Petitioner's PDR Under N.C.G.S. § 7A-31 3. Respondent's Motion to Dismiss Appeal	1. — 2. Denied 3. Allowed
084P15	State v. Curtis Louis Sangster	1. Def's *Pro Se* Petition for *Writ of Mandamus* Filed 2 March 2015 2. Def's Pro Se Petition for *Writ of Mandamus* Filed 8 June 2015	1. Denied 2. Denied
086P15-2	State v. Charles Edwards McCrae	Def's *Pro Se* Motion for PDR	Denied
087P15-2	Sandra S. Cowart, Individually and as Trustee Under the Sandra S. Cowart Living Trust Dated July 1, 2004 v. Bank of America, N.C., Shapiro & Ingle, LLP, and CornishLaw, PLLC	Plt's *Pro Se* Motion to Order Urgent Permanent Preliminary Injunction Barring Sale of Home (COAP15-124)	Dismissed 0**6/17/2015**

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090P15	State v. Demario Lamont Snead	1. State's Motion for Temporary Stay (COA14-940) 2. State's Petition for Writ of Supersedeas 3. State's PDR Under N.C.G.S. § 7A-31 4. Def's Conditional PDR Under N.C.G.S. § 7A-31 5. Def's Motion to Deem Response to PDR Timely Filed	1. Allowed **03/09/2015** 2. Allowed 3. Allowed 4. Denied 5. Allowed
092P15	Wells Fargo Bank, N.A., successor by merger to Wachovia Bank, N.A. v. Edna S. Coleman a/k/a Edna Coleman, et al.	Def's PDR Under N.C.G.S. § 7A-31 (COA14-683)	Denied
096P15	State v. Jose Antonio Marin, II	Def's Petition for *Writ of Certiorari* to Review Order of Superior Court of Cumberland County	Dismissed
100P15	State v. Antonio Nathan Greene	Def's *Pro Se* Motion for Reappointment of Counsel	Dismissed
101P15	State v. Christopher Anthony Clegg	Def's *Pro Se* Motion for Witness Protection	Dismissed
101PA14	LexisNexis Risk Data Management, Inc., a Florida Corporation, and LexisNexis Risk Solutions, Inc., a Georgia Corporation v. North Carolina Administrative Office of the Courts; John W. Smith, II, in his official capacity as the Director of the North Carolina Administrative Office of the Courts; and Nancy Lorrin Freeman, in her official capacity as the Clerk of the Wake County Superior Court	1. The News and Observer Publishing Co.; Capitol Broadcasting Company, Inc.; Time-Warner Entertainment-Advance Newhouse Partnership; DTH Media Corp.; and the North Carolina Press Foundation, Inc.'s Motion for Leave to File Amicus Brief 2. The News and Observer Publishing Co.; Capitol Broadcasting Company, Inc.; Time-Warner Entertainment-Advance Newhouse Partnership; DTH Media Corp.; and the North Carolina Press Foundation, Inc.'s Motion for Leave to Participate in Oral Argument 3. Motion of Associate Professor Ryan Thornburg for Leave to File Brief *Amicus Curiae*	1. Special Order **10/15/2014** 2. Special Order **10/15/2014** 3. Allowed **08/05/2015** **Ervin, J., recused**

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102P13-2	State v. Charles Anthony Ball	1. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of Superior Court of Henderson County	1. Dismissed
		2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis*	2. Allowed
		3. Def's *Pro Se* Motion to Appoint Counsel	3. Dismissed as moot
		4. Def's *Pro Se* Motion for Change of Venue	4. Dismissed
		5. Def's *Pro Se* Motion for Court to Provide Expert Witness and/or Investigator	5. Dismissed
		6. Def's *Pro Se* Motion to Suppress	6. Dismissed
		7. Def's *Pro Se* Motion Seeking Release of Exculpatory Evidence	7. Dismissed
102P15	State v. Joshua Wilford Houser	Def's PDR Under N.C.G.S. § 7A-31 (COA14-973)	Denied
108PA14-2	Duke Energy Carolinas, LLC v. Gray, et al.	Motion for Extension of Time to File Briefs	Allowed **08/07/2015**
112A15	Dana Marie Ribelin (f/k/a Creel) v. Phillip Ray Creel	1. Plt's Notice of Appeal Based Upon a Dissent (COA14-643)	1. —
		2. Plt's PDR as to Additional Issues	2. Allowed
		3. Plt's Motion to Accept Corrected Certificate of Filing and Service	3. Dismissed as moot
		4. Plt's Motion to Deem Notice of Appeal and PDR Timely Filed	4. Dismissed as moot
		5. Plt's Amended Motion to Accept Corrected Certificate of Filing and Service	5. Allowed
		6. Plt's Amended Motion to Deem Notice of Appeal and PDR Timely Filed	6. Allowed
		7. Plt's Petition for *Writ of Certiorari* to Review Decision of COA	7. Dismissed as moot
		8. Plt's Motion to Amend Petition for *Writ of Certiorari* and Amended Motion to Deem Timely Filed to Replace COA Opinion	8. Allowed
113A15	Patrick L. McCrory, et al. v. Philip E. Berger, et al.	Arch T. Allen III's Motion for Leave to File *Amicus* Brief	Allowed **06/29/2015**

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119P15	In the Matter of N.T.	1. Petitioner's Motion for Temporary Stay (COA14-974) 2. Petitioner's Petition for *Writ of Supersedeas* 3. Petitioner's PDR Under N.C.G.S. § 7A-31	1. Allowed **04/01/2015** 2. Allowed 3. Allowed
124PA14	State v. Jason Lynn Young	1. Def's Motion for Appropriate Relief 2. State's Motion for Extension of Time to File Response	1. See Opinion **08/20/2015** 2. Allowed **01/14/2015**
124P15	State v. Michael Scott Hamilton	1. State's Motion for Temporary Stay 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **04/06/2015** 2. Allowed 3. Special Order
125P15-2	State v. Paul A. Fuller	Def's *Pro Se* Petition for *Writ of Mandamus* (COAP15-183)	Dismissed
127P15	State v. Grant Ruffin Hayes	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA14-766) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed
128P15	Dorothy Hagood Corning v. Louis Avery Corning, IV	1. Plt's PDR Under N.C.G.S. § 7A-31 (COA14-764) 2. Plt's Petition for *Writ of Certiorari* to Review Order of District Court of Craven County	1. Denied 2. Denied
131P01-11	State v. Anthony Dove	1. Def's *Pro Se* Petition for Writ of Certiorari to Review Order of COA (COAP14-513) 2. Def's *Pro Se* Petition for *Writ of Mandamus*	1. Dismissed 2. Denied
133P15	State v. William Earl Askew	1. Def's *Pro Se* Notice of Appeal Based Upon a Constitutional Question (COA14-411) 2. Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 3. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed *ex mero motu* 2. Denied 3. Dismissed as moot
134P15	State v. Mario Dante Ramsey	Def's PDR Under N.C.G.S. § 7A-31 (COA14-1095)	Denied

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137P15	In the Matter of Julio Zelaya Sorto	Petitioner's *Pro Se* Petition for *Writ of Certiorari* to Review Order of COA (COAP15-170)	Denied
139P15	Frances Atiapo v. Goree Logistics, Inc., and Owen Thomas Inc. v. The North Carolina Industrial Commission v. Goree Logistics, Inc., and Owen Thomas, Inc., and Mandieme Diouf	1. Def's (Owen Thomas, Inc.) PDR Under N.C.G.S. § 7A-31 (COA14-977) 2. Defs' (Goree Logistics and Mandieme Diouf) PDR Under N.C.G.S. § 7A-31 3. American Trucking Association, Inc., and North Carolina Trucking Association's Conditional Motion for Leave to File *Amicus* Brief	1. Denied 2. Denied 3. Dismissed as moot
140P15	State v. Mark Dwayne Govan	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA14-999) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. — 2. Denied 3. Allowed **Jackson, J., recused**
143P15	State v. Jacob Mark Spivey	1. State's Motion for Temporary Stay (COA14-1046) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31 4. Def's Attorney's Motion to Withdraw	1. Allowed **04/24/2015** 2. Allowed 3. Allowed 4. Allowed
145P15	State v. Steven Lorenzo Lowery	Def's *Pro Se* Petition for *Writ of Certiorari* to Review Decision of COA (COA14-777)	Denied **Ervin, J., recused**
149P15	State v. Robin Otto Worth, Jr.	1. Def's *Pro Se* Notice of Appeal Based Upon a Constitutional Question (COA14-959) 2. Def's *Pro Se* PDR Under N.C.G.S. § 7A-31	1. Dismissed *ex mero motu* 2. Denied
150P15	State v. Quincey Lamar Hill	1. Def's *Pro Se* Motion for Request for Counsel 2. Def's *Pro Se* Motion to Amend	1. Denied 2. Denied **Beasley, J., recused**
152P15	Charles Daniel Robbins v. Karen Thomas Robbins	Plt's PDR under N.C.G.S. § 7A-31 (COA14-742)	Denied

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156A15	State v. Anna Laura Huckelba	1. State's Motion for Temporary Stay (COA14-916) 2. State's Petition for *Writ of Supersedeas*	1. Allowed **05/08/2015** 2. Allowed
156A15	State v. Anna Laura Huckelba	State's Motion to Amend Record on Appeal	Allowed **06/26/2015**
157P15	Tony Harold Pope, Administrator of the Estate of Susan Lanier Fries v. Bridge Boom, Inc.	1. Plt's PDR Under N.C.G.S. § 7A-31 (COA14-221) 2. Pltf's Motion to Amend PDR	1. Denied 2. Allowed
158P15	In the Matter of Appeal of Parkdale Mills and Parkdale America from the Decisions of the Davidson County Board of Equalization and Review Concerning the Valuation of Certain Real Property for the Tax Year 2007	Respondent's (Davidson County) PDR Under N.C.G.S. § 7A-31 (COA14-763)	Denied
159P15	State v. Jamar Ishmeal Wright	Def's PDR Under N.C.G.S. § 7A-31 (COA14-997)	Denied
160P15	In the Matter of L.L.B., a Juvenile	Respondent-Mother's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA14-1106)	Denied
161P15	Citibank, N.A. v. Henry M. Michaux, Jr., et al.	Def's PDR Under N.C.G.S. § 7A-31 (COA14-667)	Denied
162P15	Tonya M. Price v. Robert Calder, Jr.	Plt's PDR Under N.C.G.S. § 7A-31 (COA14-832)	Denied
163A15	Ivan McLaughlin and Timothy Stanley v. Daniel Bailey, in his Individual and Official Capacity as Sheriff of Mecklenburg County, and Ohio Casualty Insurance	1. Plts' Notice of Appeal Based Upon a Dissent (COA14-446) 2. Plts' Notice of Appeal Based Upon a Constitutional Question 3. Plts' PDR as to Additional Issues 4. Defs' Motion to Dismiss Appeal	1. --- 2. --- 3. Allowed 4. Allowed **Ervin, J., recused**

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165P15	State v. Nathaniel Paige Phillips	1. Def's Motion for Temporary Stay (COA14-1056) 2. Def's Petition for *Writ of Supersedeas* 3. Def's PDR Under N.C.G.S. § 7A-31	1. Allowed **05/15/2015** Dissolved **08/20/2015** 2. Denied 3. Denied
166P15	State v. Michelle Lynn Bailey	1. Def's Motion for Temporary Stay (COA14-1151) 2. Def's Petition for *Writ of Supersedeas* 3. Def's PDR Under N.C.G.S. § 7A-31	1. Allowed **05/18/2015** Dissolved **08/20/2015** 2. Denied 3. Denied **Jackson, J., recused**
168P15	State v. Clay Dewayne Leaks, Jr.	Def's PDR Under N.C.G.S. § 7A-31 (COA14-1141)	Denied
169P15	State v. Johnny Williams	1. Def's PDR Under N.C.G.S. § 7A-31 (COA14-1100) 2. State's Conditional PDR Under N.C.G.S. § 7A-31	1. Denied 2. Dismissed as moot
170P15	State v. Patrick Shane Williams	Def's *Pro Se* Motion for Notice of Appeal (COAP14-58)	Dismissed *ex mero motu*
171P15	Arthur Donald Darby, Jr. v. Jamie Christina Campbell, Jason Murphy, Attorney, Matthew Rothbeind, Attorney, and Fairmont Police Department, Hamlett Police Department, Robeson County Court, "John Doe"	1. Plt's *Pro Se* Motion to Suppress Against Jamie Christina Campbell, Jason Murphy, Attorney, Matthew Rothbeind, Attorney 2. Plt's *Pro Se* Motion to Suppress Against Fairmont Police Department, Hamlet Police Department, Robeson County Court, "John Doe" 3. Plt's *Pro Se* Motion for Summons Motion Open Court to Clerk in Above	1. Dismissed 2. Dismissed 3. Dismissed
173P15	State v. Juli Ann Williams	1. Def's Motion for Temporary Stay (COA14-1113) 2. Def's Petition for *Writ of Supersedeas* 3. Def's PDR Under N.C.G.S. § 7A-31	1. Allowed **05/26/2015** Dissolved **08/20/2015** 2. Denied 3. Denied
175P15	State v. Indo Ferrell Eure	Def's PDR Under N.C.G.S. § 7A-31 (COA14-396)	Denied

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176P15	State v. Michael Thurman Hall	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA14-947) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State of North Carolina' Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed
177P15	Jack Fowler and Janice Frohman, Individually and as Co-Trustees of a Protective Trust by and on Behalf of Mildred and Buford Fowler v. Norman C. Riddle and Norman C. Riddle, P.A.	Plts' PDR Under N.C.G.S. § 7A-31 (COA14-945)	Denied
179P15	State v. Cecil Harold Jones	1. Def's Notice of Appeal Based Upon a Constitutional Question 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed
181P15	Justin Lloyd v. Daniel Bailey, in his individual and official capacity as Sheriff of Mecklenburg County, and Ohio Casualty Insurance Company	1. Plt's Notice of Appeal Based Upon a Constitutional Question (COA14-935) 2. Plt's PDR Under N.C.G.S. § 7A-31 3. Defs' Motion to Dismiss Appeal 4. Plt's Motion to Consolidate and/or Stay	1. --- 2. Allowed 3. Allowed 4. Denied
182A15	State v. Adam Jarmal Hodge	1. Def's *Pro Se* Notice of Appeal Based Upon a Constitutional Question (COA14-724) 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis*	1. Dismissed *ex mero motu* 2. Allowed
183P15	In the Matter of the Foreclosure of Deed of Trust Executed by Jason Brian Vicks and Mekeisha Vicks Dated February 12, 2007 and Recorded in the Union County Public Registry, North Carolina	1. Defs' *Pro Se* Notice of Appeal Based Upon a Constitutional Question (COA14-222) 2. Defs' *Pro Se* PDR Under N.C.G.S. § 7A-31 3. Trustee's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed

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186P10-2	State v. David Felton	1. Def's *Pro Se* Petition for Writ of Certiorari to Review Order of COA (COAP15-162) 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Allowed 3. Dismissed as moot
185P15	In the Matter of the Foreclosure by Philip A. Glass, Substitute Trustee of a Deed of Trust Executed by Richard Phillip Brittain, Dated June 29, 2006 and Recorded in Book 180 at Page 755, of the Henderson County Public Registry	Respondent's PDR Under N.C.G.S. § 7A-31 (COA14-1078)	Denied
189P15	A.B. Cooper, Jr. v. Julian Everette Cameron, Jr.	Def's PDR Under N.C.G.S. § 7A-31 (COA14-1017)	Denied
191P15	Bruce D. Taylor v. Howard Transportation, Inc., and Travelers Indemnity Company of America	Plt's PDR Under N.C.G.S. § 7A-31 (COA14-922)	Denied
194P15	State v. Julie Ann English	Def's PDR Under N.C.G.S. § 7A-31 (COA14-952)	Denied
195P15	State v. Timmy Strickland	Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of COA (COAP15-340)	Denied
196A15	North Carolina State Bar v. Willie D. Gilbert, II	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA14-1159) 2. Plt's Motion to Dismiss Appeal 3. Def's Petition for *Writ of Certiorari*	1. --- 2. Allowed 3. Denied
197P15	James R. Crider, Sr., and wife, Kathy Crider v. John Vincent Cattie, M.D.	Plts' PDR Under N.C.G.S. § 7A-31 (COA14-603)	Denied

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198P15	State v. Dennis Y. Jackson	Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of COA (COAP14-791)	Denied
200P15	State v. Kevin Mitchell	Def's *Pro Se* Petition for *Writ of Mandamus*	Dismissed **06/17/2015**
201PA12-3	Margaret Dickson, et al. v. Robert Rucho, et al.	1. Motion to Admit Robert A. Atkins *Pro Hac Vice* 2. Motion to Admit Farrah R. Berse *Pro Hac Vice* 3. Motion to Admit Pietro Signoracci *Pro Hac Vice* 4. Motion to Admit Theodore V. Wells, Jr. *Pro Hac Vice* 5. Motion to Admit Jaren Janghorbani *Pro Hac Vice*	1. Allowed **06/16/2015** 2. Allowed **06/16/2015** 3. Allowed **06/16/2015** 4. Allowed **06/16/2015** 5. Allowed **06/16/2015**
201PA12-3	Margaret Dickson, et al. v. Robert Rucho, et al.	Congressional Black Caucus' Motion for Leave to File *Amicus* Brief	Allowed **06/16/2015**
201PA12-3	Margaret Dickson, et al. v. Robert Rucho, et al.	N.C. Law Professors' Motion for Leave to File *Amicus* Brief	Allowed **06/29/2015**
201P15	Twan Bey (Antwan L. Burns) v. Cumberland County District Court, Robert J. Stiehl	Petitioner's *Pro Se* Petition for *Writ of Mandamus*	Dismissed
203P15	State v. Anthony Craig Walker	1. Def's *Pro Se* Motion for PDR Under N.C.G.S. § 7A-31 (COA13-1356) 2. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Decision of COA	1. Denied 2. Denied

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204P15	Mountain Villages, LLC, Melba Richards, Manager, and Lori Richards, Owner v. Zara Ellis Sadler	1. Def's *Pro Se* Motion for Temporary Stay (COAP15-437) 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 for Temporary Stay 5. Def's *Pro Se* Petition for *Writ of Supersedeas* 6. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of the Jackson County District Court 7. Plaintiff's Emergency Motion to Dismiss Appeal	1. Denied **06/24/2015** 2. Denied 3. Denied 4. Denied **07/13/2015** 5. Denied 6. Denied 7. Dismissed without prejudice **07/14/2015**
205P15	Stephen A. Best v. North Carolina	Petitioner's *Pro Se* Petition for *Writ of Habeas Corpus*	Denied **06/23/2015**
206A15	State v. Keith A. Leak	1. State's Motion for Temporary Stay (COA14-591) 2. State's Petition for *Writ of Supersedeas*	1. Allowed **06/23/2015** 2. Allowed
207P15	Beth Desmond v. The News and Observer Publishing Company, McClatchy Newspapers, Inc., Mandy Locke, Joseph Neff, John Drescher, and Steve Riley	1. Defs' (The News and Observer Publishing Company, McClatchy Newspapers, Inc., and Mandy Locke) Notice of Appeal Based Upon a Constitutional Question (COA14-625) 2. Defs' (The News and Observer Publishing Company, McClatchy Newspapers, Inc., and Mandy Locke) PDR Under N.C.G.S. § 7A-31 3. North Carolina Association of Broadcasters, North Carolina Press Association, the Associated Press, BH Media Group, Inc., Gannett Company, Inc., Halifax Media Group, The Carolina Journal, and Time Warner Cable News' Conditional Motion for Leave to File *Amicus* Brief	1. Dismissed *ex mero motu* 2. Denied 3. Dismissed as moot
210P15	State v. Luis Ovando	Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA14-1188)	Denied
211P15	State v. Vincent Gregory	Def's *Pro Se* Motion for PDR (COAP14-1029)	Dismissed

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212P15	State v. Tracy Donnell Cousin	Def's *Pro Se* Motion for PDR Under N.C.G.S. § 7A-31 (COAP15-386)	Dismissed
214P15	State v. Raymond Bennett	Petitioner's *Pro Se* Petition for *Writ of Habeas Corpus*	Denied **06/26/2015**
215P15	In the Matter of J.W. and K.M.	Respondent-Mother's PDR Under N.C.G.S. § 7A (COA14-927)	Denied
216P15	Amy Pharr Elam, Elizabeth F. Bailey, and Reid T. Deramus v. William Douglas Management, Inc. and Charlotte House Association of Unit Owners, Inc.	1. Plts' PDR Under N.C.G.S. § 7A-31 (COA14-1377) 2. Plts' Motion for Temporary Stay 3. Plts' Petition for *Writ of Supersedeas*	1. 2. Allowed **07/22/2015** 3.
217P15	State v. Raymond L. Hargett	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA14-1252) 2. Def's PDR Under N.C.G.S. § 7A-31 3. Def's Petition for *Writ of Certiorari* to Review Order of Superior Court of Craven County 4. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Denied 4. Allowed
218P15	State v. Michael Bruce Thomas	Def's PDR Under N.C.G.S. § 7A-31 (COA14-1135)	Denied
220P15	State v. Adam Courtney Hartley	1. Def's *Pro Se* Motion for Notice of Appeal (COAP15-432) 2. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed *ex mero motu* 2. Dismissed as moot
221P15	State v. Aaron D. Stalls	Def's *Pro Se* Petition for *Writ of Mandamus*	Denied
222P15	Thomas F. Adcox v. Clarkson Brothers Construction Company and UTICA National Insurance Group	1. Defs' Motion for Temporary Stay 2. Defs' Petition for *Writ of Supersedeas*	1. Allowed **07/02/2015** 2.
222A14	State v. Bernard George Lamp, Jr. (DEATH)	Def's Motion to Consolidate Appeals	Allowed 07/13/2015

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223P15	State v. Robert Bishop	1. Def's Motion for Temporary Stay (COA14-227)	1. Allowed **07/02/2015**
		2. Def's Petition for *Writ of Supersedeas*	2. Allowed
		3. Def's Notice of Appeal Based Upon a Constitutional Question	3. ---
		4. Def's PDR Under N.C.G.S. § 7A-31	4. Allowed
		5. Def's Petition for *Writ of Certiorari* in the Alternative	5. Dismissed as moot
		6. State's Motion to Dismiss Appeal	6. Allowed
226P15	State v. Dammion Lamont Martin	1. State's Motion for Temporary Stay (COA14-1179)	1. Allowed **07/06/2015** Dissolved **08/20/2015**
		2. State's Petition for *Writ of Supersedeas*	2. Denied
		3. State's PDR Under N.C.G.S. § 7A-31	3. Denied
227P15	State v. Salvador Quinonez	Def's PDR Under N.C.G.S. § 7A-31 (COA14-680)	Denied
228A15	North Carolina Association of Educators, Inc.; Richard J. Nixon; Rhonda Holmes, Brian Link, Annette Beatty, Stephanie Wallace, and John Deville v., The State of North Carolina	Motion to Admit Philip A. Hostak *Pro Hac Vice*	Allowed
228A15	North Carolina Association of Educators, Inc.; Richard J. Nixon; Rhonda Holmes, Brian Link, Annette Beatty, Stephanie Wallace, and John Deville v., The State of North Carolina	1. Def-Appellant's Notice of Appeal Based Upon a Dissent (COA14-998)	1. ---
		2. Def-Appellant's PDR as to Additional Issues	2. Allowed
229P15	State v. Christopher Lee King	1. Defendant-Appellant's Motion for Temporary Stay	1. Allowed **07/07/2015** Dissolved **08/20/2015**
		2. Defendant-Appellant's Petition for *Writ of Supersedeas*	2. Denied
		3. Defendant-Appellant's PDR Under N.C.G.S. § 7A-31	3. Denied

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231P15	State v. Adolfo Reyes Maldonado	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA14-1119) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. — 2. Denied 3. Allowed
232A95-5	State v. Timothy Richardson	Def's Motion for Enlargement of Time to File Petition for *Writ of Certiorari*	Allowed **08/07/2015**
233P15	State v. Jacobi Paylor Walker	Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA14-1259)	Denied
237P15	State v. Tony Levatte Smith	1. Def's *Pro Se* Petition for *Writ of Habeas Corpus* 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Motion for Appointment of Counsel	1. Denied **07/13/2015** 2. Allowed **07/13/2015** 3. Dismissed as moot **07/13/2015**
239P10-2	State v. Jakiem Lance Wilson	1. Def's *Pro Se* Motion for Temporary Stay 2. Def's *Pro Se* Petition for W*rit of Supersedeas* (COAP15-405) 3. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of Superior Court of Wake County	1. Dismissed **08/03/2015** 2. Denied **08/03/2015** 3. Dismissed **08/03/2015**
239P15	Ivan Earl Warren v. Lawrence Parsons	Petitioner's *Pro Se* Petition for *Writ of Habeas Corpus*	Denied **07/15/2015**
240P15	In the Matter of Appeal of Celeste G. Broughton, Trustee, From the Decision of the Wake County Board of Equalization and Review Regarding the Valuation and Taxation of Certain Property for Tax Year 2013	1. Taxpayer's *Pro Se* Motion for Notice of Appeal (COA15-519) 2. Taxpayer's *Pro Se* Motion to Proceed *In Forma Pauperis*	1. Dismissed *ex mero motu* 2. Denied
241P11-4	State v. Delton Maynor	Def's *Pro Se* Motion for PDR of Writ of Certiorari (COAP15-396)	Dismissed
242P15	State v. Jermaine Earl Hicks	Def's *Pro Se* Petition for *Writ of Mandamus*	Dismissed
245P15	State v. Christopher Lee Furr	Def's PDR Under N.C.G.S. § 7A-31 (COA14-1004)	Denied

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249P15	State v. Donald Wayne Mims	Def's PDR Under N.C.G.S. § 7A-31 (COA14-1333)	Denied
251P15	Kevin Schaap v. Honorable Donna H. Johnson, Judge, Cabarrus County District Court and Mardan, II, LLC	Petitioner's *Pro Se* Motion for Notice of Appeal (COAP15-429)	Dismissed *ex mero motu*
252P15	In the Matter of D.L.W., D.L.N.W., V.A.W.	1. Petitioner and GAL's Motion for Temporary Stay (COA14-1341) 2. Petitioner and GAL's Petition for *Writ of Supersedeas* 3. Petitioner and GAL's PDR Under N.C.G.S. § 7A-31	1. Allowed **07/22/2015** 2. 3.
255P15	State v. Anthony Tyrone McLean	Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of COA (COAP15-282)	Dismissed
256P15	State v. Charles Edward Humphries, Jr.	1. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of Superior Court of Transylvania County 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Allowed 3. Dismissed as moot
259P15	State v. Jermaine L. Holloway	1. Def's *Pro Se* Motion for PDR (COAP15-403) 2. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of COA	1. Dismissed 2. Dismissed
260P15	State v. Leonard Hardy	1. Def's Motion for Temporary Stay (COA14-1320) 2. Def's Petition for *Writ of Supersedeas* 3. Def's Motion to Dissolve Temporary Stay 4. Def's Motion to Withdraw Petition for *Writ of Supersedeas*	1. Allowed **07/27/2015** 2. --- 3. Allowed **07/30/2015** 4. Allowed **07/30/2015**

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262P15	State v. Omar Jalam Cook	Def's *Pro Se* Motion to Dismiss	Dismissed
263P15	State v. Case Rafeal Tyler	Def's *Pro Se* Motion for Notice of Appeal	Dismissed *ex mero motu*
266P14	Robert Carpenter and Tammy Carpenter, individually and Tammy Carpenter as Administrator of the Estate of Monique L. Carpenter v. Willie McKinney, individually and jointly and severally with Windham Heating and Air Conditioning, Inc., individually and jointly and severally with Old Republic Home Protection Company, Inc., individually and jointly and severally with Paul Edward Windham, individually and d/b/a Windham Heating & Air	1. Plts' PWC to Review Order of COA (COA13-516) 2. Def's (Old Republic Home Protection Company, Inc.) Motion for Extension of Time to File Response	1. Special Order 2. Allowed **08/13/2014**
267P15	In the Matter of Julio Zelaya Sorto	Petitioner's *Pro Se* Petition for *Writ of Mandamus*	Denied
271P15	State v. Felix Ricardo Saldierna	1. State's Motion for Temporary Stay (COA14-1345) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **08/03/2015** 2. 3.
272P15	Susan Vaughan v. Currituck DSS, et al.	1. Petitioner's *Pro Se* Motion for Temporary Stay (COAP14-997) 2. Petitioner's *Pro Se* Petition for *Writ of Supersedeas* 3. Petitioner's *Pro Se* Petition for *Writ of Certiorari* to Review Order of COA	1. Denied **08/06/2015** 2. 3.

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277P15	George Andrew Bratton and the Estate of Geena Gee Bratton v. State of North Carolina, et al.	Plt's P*ro Se* Motion Under Rule 8(a) to Stay All Court Proceedings	Denied **08/07/2015**
278P15	State v. David Matthew Lowe	1. Def's Motion for Temporary Stay 2. Def's Petition for *Writ of Supersedeas*	1. Allowed **08/11/2015** 2.
280PA14	In the Matter of J.C. and J.C.	Petitioner's Motion to Dismiss Appeal	Dismissed as moot **07/01/2015**
294PA14	Robert E. King and wife, Jo Ann O'Neal v. Michael S. Bryant, M.D., and Village Surgical Associates, P.A.	Defs' PDR Under N.C.G.S. § 7A-31 (COA13-1003)	Special Order
296P15	Ernest James Nichols v. Richard Terry, Superintendent – Craggy Correctional Center; Frank L. Perry, Secretary of the North Carolina Department of Public Safety	Petitioner's *Pro Se* Petition for *Writ of Habeas Corpus*	Denied **08/20/2015**
302A14	State v. Juan Carlos Rodriguez	Def's Motion for Hearing on Designation of Biological Evidence Under N.C.G.S. § 268(a3)	Allowed **07/15/2015**
311P14	Packers Printing and Publishing Company, Inc., and Packers Printing and Publishing Company, Inc. t/d/b/a Budget Printing, Co. v. Anajet, LLC; and Anajet, LLC t/c/b/a Anajet, Inc.	1. Def's PDR Under N.C.G.S. § 7A-31 (COA13-1449) 2. Plt's Conditional PDR Under N.C.G.S. § 7A-31	1. Denied 2. Dismissed as moot
330PA14	Lassiter, ex rel. v. North Carolina Baptist Hospitals, Incorporated, et al.	Plaintiff's Motion to Substitute Counsel	Allowed **08/05/2015**
332PA14	State v. Gregory Aldon Perkins	Def's Motion for Judicial Notice	Allowed **07/29/2015**

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332PA14	State v. Gregory Aldon Perkins	State's Motion to Amend Record on Appeal	Allowed
338P14-2	Waddell Bynum J. v. Progressive Ins. Group, Inc., Mark A. Valentine, Agent	Plt's *Pro Se* Motion to Appeal	Dismissed
341P12-3	State v. Donald Durrant Farrow	1. Def's *Pro Se* Notice of Appeal Based Upon a Constitutional Question (COA14-1189) 2. Def's *Pro Se* PDR Under N.C.G.S. § 7A-31	1. Dismissed e*x mero motu* 2. Denied
349P14	State v. William Scott Keane	Def's PDR Under N.C.G.S. § 7A-31 (COA14-171)	Denied **Ervin, J., recused**
354P14	State v. Michael B. Postell	Def's PDR Under N.C.G.S. § 7A-31 (COA13-1390)	Denied **Ervin, J., recused**
355P14-2	Terri Young v. Daniel Bailey, in his Official Capacity as Sheriff of Mecklenburg County, and Ohio Casualty Insurance Company	1. Plt's Notice of Appeal Based Upon a Constitutional Question (COA14-966) 2. Plt's PDR Under N.C.G.S. § 7A-31 3. Defs' Motion to Dismiss Appeal 4. Plt's Motion to Consolidate and/or Stay	1. --- 2. Allowed 3. Allowed 4. Denied
374P13-4	State v. Marvin Wade Millsaps	1. Def's *Pro Se* Motion to Reconsider 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Motion for Time Cut 4. Def's *Pro Se* Motion for Appellate Review 5. Def's *Pro Se* Motion for Appellate Procedure Substantial Offense 6. Def's *Pro Se* Motion for Appellate Review	1. Dismissed 2. Allowed 3. Dismissed 4. Dismissed 5. Dismissed 6. Dismissed **Ervin, J., recused**
383P14	State v. Montice Terrill Harvell	Def's PDR Under N.C.G.S. § 7A-31 (COA14-228)	Denied

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391P14	State v. Lynwood Eugene Harris, Jr.	1. Def's Motion for Temporary Stay (COA13-1330) 2. Def's Petition for *Writ of Supersedeas* 3. Def's PDR Under N.C.G.S. § 7A-31	1. Denied **10/21/2014** 2. Denied 3. Denied **Ervin, J., recused**
407P14-3	Dwain Cornelius Ferrell v. Brad Perritt, Administrator	1. Def's *Pro Se* Petition for *Writ of Habeas Corpus* 2. Def's *Pro Se* Motion for Leave to Amend 3. Def's *Pro Se* Motion for Subpoena *Duces Tecum*	1. Denied **07/13/2015** 2. Dismissed as moot 3. Dismissed as moot
415P13-2	Kelvin W. Sellars v. Frank L. Perry	1. Petitioner's *Pro Se* Petition for *Writ of Habeas Corpus* 2. Petitioner's *Pro Se* Motion for PDR	1. Denied **07/13/2015** 2. Denied **07/13/2015**
421P10-3	Robert Alan Lillie v. Michael Ball, Superintendent of Avery-Mitchell Correctional Institution	1. Petitioner's *Pro Se* Petition for *Writ of Certiorari* to Review Order of COA 2. Petitioner's *Pro Se* Petition for *Writ of Habeas Corpus* 3. Petitioner's *Pro Se* Motion to Proceed *In Forma Pauperis* 4. Petitioner's *Pro Se* Motion to Appoint Counsel	1. Denied **07/13/2015** 2. Denied **07/13/2015** 3. Allowed **07/13/2015** 4. Dismissed as moot **07/13/2015**
423P14	State v. Tavares Laquin Jeter	1. Def's *Pro Se* Notice of Appeal Based Upon a Constitutional Question (COA14-337) 2. Def's *Pro Se* PDR Under N.C.G.S. § 7A-31	1. Dismissed *ex mero motu* 2. Denied
445P14	Shirley Lipe, Widow and Executrix of the Estate of Ross Iddings Lipe, Deceased Employee v. Starr Davis Company, Inc., Employer, Travelers Casualty & Surety (as Successors to Aetna Casualty & Surety Company), Carrier	1. Def's (Travelers Casualty & Surety) Motion for Temporary Stay (COA14-90-2) 2. Def's (Travelers Casualty & Surety) Petition for *Writ of Supersedeas* 3. Def's (Travelers Casualty & Surety) PDR Under N.C.G.S. § 7A-31 4. N.C. Chamber and N.C. Association of Defense Attorneys' Conditional Motion for Leave to File *Amicus* Brief 5. Def's (Travelers Casualty & Surety) Motion to Amend PDR	1. Allowed **12/10/2014** Dissolved **08/20/2015** 2. Denied 3. Denied 4. Dismissed as moot 5. Allowed

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449P11-12	State v. Charles Everette Hinton	1. Def's *Pro Se* Motion for Notice and Petition for *Writ of Certiorari* 2. Def's *Pro Se* Motion for Notice and Petition for the Chief Justice and Associate Justices to Take Judicial Notice of Adjudicative Facts and Findings by the Court 3. Def's *Pro Se* Motion for Petition for Remedial Writ	1. Dismissed 2. Dismissed 3. Dismissed
453P02-3	State v. Eugene Tyrone Miller	1. Def's *Pro Se* Motion for PDR (COAP15-473) 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Allowed 3. Dismissed as moot
455P14-3	State v. Reginald Fullard	1. Def's *Pro Se* Motion to Appeal and Be Constitutionally Heard in Open Court Before a Sworn Jury 2. Def's *Pro Se* Motion for Order of Transcripts	1. Dismissed 2. Dismissed
462A14	Aaron Byrd and Eric Coombs v. Franklin County, North Carolina	Respondent's Motion for Extension of Time to File Brief	Allowed **07/01/2015**
471P14	John Price v. State of N.C. Office of the State Auditor	1. State's PDR Under N.C.G.S. § 7A-31 (COA14-375) 2. State's Motion for Consolidation 3. Petitioner's Motion to Dismiss PDR 4. Respondent's Motion for Leave to File Reply Brief to Response to Motion to Dismiss 5. Motion to Appear	1. 2. Denied **04/09/2015** 3. 4. 5. Denied **08/20/2015** **Ervin, J., recused**
475P14-3	State v. Reginald U. Fullard	Def's *Pro Se* Motion for Order of Transcripts	Dismissed
567P13-2	State v. Manuel Castaneda Moreno	Def's *Pro Se* Petition for *Writ of Certiorari* to Review Decision of the COA (COA12-1402)	Dismissed **Ervin, J., recused**

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580P05-13	David L. Smith, on Behalf of Himself and All Others Similarly Situated v. State of North Carolina, Gov. Pat McCrory, Wake County Superior Court, and Judge Donald W. Stephens	1. Plt's *Pro Se* Petition for *Writ of Mandamus* 2. Application for *Writ of Mandamus* – Pursuant to N.C.G.S. § 7A-31 or Procedure by Common Law	1. Denied 2. Denied
618P07-2	State v. Alfred William Riley, Jr.	1. Def's *Pro Se* Motion for PDR 2. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Dismissed as moot
629P01-3	State v. John Edward Butler	Def's *Pro Se* Motion for N.C. Supreme Court Review (COAP14-558)	Dismissed

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