

IN THE SUPREME COURT OF NORTH CAROLINA

No. 104PA04

FILED: 3 DECEMBER 2004

STATE OF NORTH CAROLINA

v.

ALVIN TERRILL FOSTER, JR.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, 162 N.C. App. 665, 592 S.E.2d 259 (2004), reversing a judgment entered by Judge Charles H. Henry in Superior Court, Onslow County and remanding for a new trial. Heard in the Supreme Court 10 November 2004.

*Roy Cooper, Attorney General, by John G. Barnwell, Assistant Attorney General, for the State-appellant.*

*George E. Kelly, III for defendant-appellee.*

*Moore & Van Allen PLLC, by James C. White, for American Civil Liberties Union of North Carolina Legal Foundation, Inc.*

PER CURIAM.

Justice Newby 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 *Crawford v. Commercial Union Midwest Ins. Co.*, 356 N.C. 609, 572 S.E.2d 781 (2002); *Robinson v. Byrd*, 356 N.C. 608, 572 S.E.2d 781 (2002).

AFFIRMED.