

IN THE SUPREME COURT OF NORTH CAROLINA

No. 165A24

Filed 23 October 2026

STATE OF NORTH CAROLINA *v.* PHILIP ANTHONY MONTANINO

Appeal pursuant to N.C.G.S. § 7A-30(2) (2023) from the decision of a divided panel of the Court of Appeals, 294 N.C. App. 240 (2024), reversing a judgment entered on 6 December 2021 by Judge Josephine K. Davis in Superior Court, Durham County, and remanding the case. On 27 June 2025, the Supreme Court allowed the State’s petition for discretionary review as to additional issues. Heard in the Supreme Court on 14 April 2026.

Jeff Jackson, Attorney General, by Robert C. Ennis, Special Deputy Attorney General, for the State-appellant.

Ryan Christopher Kuchinski for defendant-appellee.

OPINION OF THE COURT

BARRINGER, Justice.

The issues in this case arise from the trial of Philip Montanino for the murder of Elizabeth Watson and the larceny of her vehicle. The first issue is whether the trial court plainly erred in its jury instruction and accompanying jury verdict sheet. We hold that under the exacting prejudice standard required for plain error review, the trial court did not plainly err. The second issue is whether the State presented sufficient evidence of value to support the felony larceny offense underlying defendant’s first-degree murder conviction, which was based on the felony murder rule. We hold that direct evidence of value is not required when the property at issue is so ubiquitous that the average juror can rely on his or her general knowledge and experience to determine, with a high degree of certainty, that the property’s value is above the statutory threshold. As such, the State presented sufficient evidence to support defendant’s first-degree murder conviction.

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I. Background

On 2 July 2018, law enforcement officers found Elizabeth Watson dead inside her Durham apartment. Ms. Watson’s body had been wedged between her bed and the wall. The same day, law enforcement officers arrested defendant Philip Montanino for first-degree murder. The matter was tried before a jury on 29 November 2021. The evidence presented at the trial tended to show the following:

Ms. Watson and defendant both struggled with addiction. Ms. Watson habitually abused alcohol. Meanwhile, defendant was addicted to crack cocaine and alcohol. At one point in her life, Ms. Watson enrolled herself in rehab and lived sober for twenty years. During this twenty-year period, Ms. Watson worked for various sober living organizations supporting members of her community experiencing addiction recovery.

One such organization included the Freedom House Recovery Center in Chapel Hill, where she worked for approximately nineteen years. In early 2018, defendant sought treatment for his addiction at Freedom House. At that time, Ms. Watson worked in patient intake where she met defendant. Ms. Watson and defendant became acquaintances. Defendant would frequently talk to Ms. Watson and “check[] in” to see how she was doing. However, when defendant met Ms. Watson, she had begun “sliding back” into her alcohol addiction. Ms. Watson’s drinking quickly became severe—so severe that in May 2018 she lost her job at Freedom House after she showed up to work drunk. After being fired, Ms. Watson “spiraled” further into her alcohol addiction.

Defendant also relapsed around this time, and the two started drinking together at Ms. Watson’s apartment. Ms. Watson and defendant would drink until they passed out, wake up, and repeat the same cycle. Ms. Watson’s daughter, Jamie Watson, knew about her mother’s relapse. Jamie would frequently speak to her mother and encourage her to obtain help.

On Saturday, 30 June 2018, Jamie received a voicemail from her mother’s cell phone. The voicemail stated, “call me back.” However, it was a man’s voice on the other end of the line. Jamie attempted to call her mother back until 3:00 a.m. the next day, Sunday, 1 July 2018. Yet Jamie never received a response. On Monday, 2 July 2018, Jamie called 911 and asked police to conduct a welfare check on her mother’s apartment.

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A law enforcement officer arrived at Ms. Watson's apartment that afternoon. Once inside, the officer found Ms. Watson's apartment "in disarray." Empty beer cans and containers were scattered about the apartment. Clothes were piled on the bedroom floor. Pet feces littered the bathroom surfaces. After sweeping the house for safety, the officer took a closer look at Ms. Watson's bedroom. Upon closer inspection, the officer found Ms. Watson's lifeless body wedged between her bed and the wall. The officer then called a homicide detective to the scene to investigate.

The responding homicide detective discovered that Ms. Watson's 2012 Suzuki SUV was missing from her residential parking lot. Neighbors explained to the detective that they had previously overheard Ms. Watson and defendant arguing over the Suzuki SUV. Based on information gathered at the scene, the detective subsequently obtained an arrest warrant for defendant. Police then found defendant in Chapel Hill with the Suzuki SUV in the same vicinity. During his arrest, defendant asked the officers, "Is she dead?"

Detectives located Ms. Watson's debit card and expired driver's license in defendant's wallet. Detectives also discovered that defendant had pawned Ms. Watson's cell phone for \$215 the day before. The forensic investigation found defendant's fingerprints throughout Ms. Watson's apartment. It also uncovered Ms. Watson's blood on the shorts defendant was wearing during his arrest. A medical examination of Ms. Watson's body revealed that her death was caused by multiple blunt force injuries. On Ms. Watson's back alone, she suffered at least forty separate blunt force injuries, resulting in six broken ribs. On Ms. Watson's head, she sustained numerous bruises, resulting in a brain injury.

After the close of evidence, the trial court charged the jury on first-degree murder on the basis of malice, premeditation, and deliberation, and under the felony murder rule. With respect to first-degree murder under the felony murder rule, the trial court charged the jury that Ms. Watson's Suzuki SUV served as the property underlying the felony larceny offense.

After charging the jury as to each theory of first-degree murder, the trial court instructed the jury that if it does not find, or has a reasonable doubt as to, any of the elements, it will "not return a verdict of guilty" as to either theory.

The trial court then charged the jury on the lesser-included offenses of second-degree murder and voluntary manslaughter. After charging the jury as to each of the

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lesser-included offenses, the trial court instructed the jury that if it does not find, or has a reasonable doubt as to any of the elements, it will “return a verdict of not guilty.” No party objected to the jury instructions.

Following deliberations, the jury returned a guilty verdict of first-degree murder under the felony murder rule. The jury verdict sheet read as follows:¹

We, the jury, return the unanimous verdict as follows:

1. Guilty of First Degree Murder

ANSWER: Yes

IF YOU ANSWER “YES”, IS IT:

A. On the basis of malice, premeditation and deliberation?

ANSWER: No

B. Under the first degree felony murder rule?

ANSWER: Yes

If you find the Defendant Guilty of First Degree Murder stop here.

2. Guilty of Second Degree Murder

ANSWER: _____

If you find defendant Guilty of Second Degree Murder you must unanimously find one or more of A, B, or C below.

A. Is it malice meaning hatred, ill will, or spite?

ANSWER: _____

B. Is it malice defined as condition of mind which prompts a person to take the life of another intentionally or to intentionally inflict serious bodily harm which proximately results in another’s death, without just cause, excuse or justification?

ANSWER: _____

¹ The jury’s handwritten answers are in italics.

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C. Is it malice that arises when an act which is inherently dangerous to human life is intentionally done so recklessly and wantonly as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief?

ANSWER: _____

If you find the Defendant Guilty of Second Degree Murder stop here.

3. Guilty of Voluntary Manslaughter

ANSWER: _____

No party objected to the jury verdict sheet form. Each member of the jury was polled, confirming his or her verdict. The trial court sentenced defendant to life without the possibility of parole. Defendant entered an oral notice of appeal.

Defendant presented two arguments to the Court of Appeals. *State v. Montanino*, 294 N.C. App. 240, 243 (2024). First, defendant argued that the trial court erred by failing to include a spot on the jury verdict sheet for the jury to find defendant “not guilty.” *Id.* Second, defendant argued that his murder conviction, based on the felony murder rule, must be set aside for insufficiency of the evidence. *Id.* at 246. The Court of Appeals rejected defendant’s first argument but agreed with his second.

The Court of Appeals majority first explained that because defendant failed to object to both the jury instruction and the jury verdict sheet, review was limited to plain error review. *Id.* at 243. The court then concluded that the absence of a “not guilty” space on the jury verdict sheet did not amount to plain error. *Id.* at 246. The court explained that the jury’s “No” answer likely indicated that the jury had found defendant “not guilty” of first-degree murder on the basis of malice, premeditation, and deliberation. *Id.* at 244. Thus, the jury must have understood, in light of the trial court’s instructions, that it could find defendant “not guilty.” *Id.* For this reason, the jury probably would not have reached a different result even if the jury verdict sheet had included a separate “not guilty” space.

Regarding defendant’s insufficiency of the evidence challenge, however, the Court of Appeals agreed that the State had failed to satisfy its burden of proving that Ms. Watson’s Suzuki SUV was worth over one thousand dollars to support the felony

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larceny offense. *Id.* at 246 (citing N.C.G.S. § 14-72(a) (2023)). Based on the jury charge, felony larceny of the Suzuki SUV was the only underlying felony offense to support the first-degree murder conviction under the felony murder rule. The Court of Appeals observed that felony larceny requires that “the value of the stolen property exceed[] more than \$1,000.00.” *Id.* (citing N.C.G.S. § 14-72(a)). However, at defendant’s trial, “the State did not offer any opinion evidence regarding the vehicle’s value . . . or any other evidence which included a dollar amount from which the jury could make a value determination.” *Id.* at 247. Relying on *State v. Holland*, 318 N.C. 602 (1986), the Court of Appeals concluded that a felony larceny offense cannot be proven without evidence of monetary value. *Montanino*, 294 N.C. App. at 247. Consequently, the court reversed defendant’s first-degree murder conviction. *Id.* at 248.

One judge on the panel dissented, but only as to the majority’s plain error review conclusion. *Id.* at 251 (Stroud, J., concurring in part and dissenting in part).² The dissenting judge argued that the combination of both the jury verdict sheet and the jury instruction amounted to plain error. *Id.* at 259. The dissent found it significant that the trial court had not specifically instructed the jury to find defendant “not guilty” as to the first-degree murder theories if it did not find, or had a reasonable doubt as to, any of the elements. *Id.* Instead, the trial court instructed the jury to “not return a verdict of guilty of first-degree murder.” *Id.* at 256 (majority opinion) (emphasis omitted). The dissent concluded that it “would hold the instructions and verdict sheet require a new trial since the instructions and the jury verdict sheet did not direct the jury to find Defendant ‘not guilty’ of each theory of murder if not convinced beyond a reasonable doubt of guilt.” *Id.* at 259 (Stroud, J., concurring in part and dissenting in part).

The State and defendant each filed a notice of appeal based upon a dissent pursuant to N.C.G.S. § 7A-30(2).³ The State then filed a petition for discretionary

² The dissent also took issue with the majority’s instructions on remand. *Montanino*, 294 N.C. App. at 259–62 (Stroud, J., concurring in part and dissenting in part). However, based on our holding here, this issue is now moot.

³ The General Assembly repealed the portion of N.C.G.S. § 7A-30 that conferred a right to appeal to the Supreme Court based on a Court of Appeals dissent. Current Operations Appropriations Act of 2023, S.L. 2023-134, § 16.21(d), 2023 N.C. Sess. Laws 760, 1171. This appeal was filed and docketed at the Court of Appeals before the effective date of that act.

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review as to additional issues pursuant to N.C.G.S. § 7A-31(c), which this Court allowed.

II. Analysis

Defendant appeals the conclusion that the trial court’s failure to include a “not guilty” jury instruction as to the first-degree murder charge and a “not guilty” space on the jury verdict sheet does not amount to plain error. The State, for its part, appeals the conclusion that it presented insufficient evidence to prove the felony larceny offense underlying defendant’s first-degree murder conviction. We address each in turn.

A. Plain Error Review

Defendant concedes that he did not object to either the trial court’s first-degree murder jury instruction or the jury verdict sheet. As such, the alleged errors are unpreserved. *State v. Lawrence*, 365 N.C. 506, 516 (2012). Unpreserved errors are only reviewed for plain error. *Id.* In addition, because defendant’s challenge is before us by way of notice of appeal based upon a dissent, see N.C.G.S. § 7A-30(2), our review is limited to only those grounds “specifically set out in the dissenting opinion as the basis for that dissent,” *Cryan v. Nat’l Council of YMCAs of the U.S.*, 384 N.C. 569, 574 (2023) (extraneities omitted).

This Court most recently clarified plain error review in *State v. Reber*, 386 N.C. 153 (2024). However, despite *Reber* being published before the decision below, neither the majority nor the dissenting opinion discuss *Reber* in their analyses. In *Reber*, this Court reiterated plain error’s “three-factor test.” *Id.* at 158 (citing *Lawrence*, 365 N.C. at 518). “First, the defendant must show that a fundamental error occurred at trial.” *Id.* “Second, the defendant must show that the error had a ‘probable impact’ on the outcome, meaning that ‘absent the error, the jury probably would have returned a different verdict.’” *Id.* (quoting *Lawrence*, 365 N.C. at 518–19). “Finally, the defendant must show that the error is an ‘exceptional case’ that warrants plain error review, typically by showing that the error seriously affects ‘the fairness, integrity or public reputation of judicial proceedings.’” *Id.* (quoting *Lawrence*, 365 N.C. at 518).

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Reber then clarified the second prong, because “the Court of Appeals consistently ha[d] struggled with [its] application” of this prong. *Id.*⁴ Specifically, our Court stated that to show a jury “probably” would have reached a different result were it not for the error “requires a showing that the outcome is significantly more likely than not.” *Id.* at 159. *Reber* explained, a result that probably will occur is one that is “almost certainly the expected outcome.” *Id.* (extraneities omitted). Indeed, probably is “treated as synonymous with words such as ‘presumably’ and ‘doubtless.’” *Id.* (first quoting *Probably*, New Oxford American Dictionary (3d ed. 2010); and then quoting *Probably*, Merriam-Webster’s Collegiate Dictionary (11th ed. 2007)). Thus, *Reber* restored the more “exacting prejudice standard required for plain error review.” *Id.* at 160.

To this Court, defendant argues that the jury instruction combined with the jury verdict sheet “impermissibly suggested” to the jury that it “should find” that defendant committed murder under at least one of the first-degree murder theories. (Extraneities omitted.) This impermissible suggestion, defendant contends, constituted prejudicial error.

This Court has not conclusively applied plain error review to a jury verdict sheet. Instead, “plain error review in North Carolina is *normally* limited to instructional and evidentiary error.” *Lawrence*, 365 N.C. at 516 (emphasis added.). To be sure, the verdict sheet, *alone*, is not part of any instructional or evidentiary process. Rather, it serves to guide the jury’s deliberative process.

However, this Court has yet to address whether a verdict sheet may become sufficiently instructional in nature when, for example, it contains language reinforcing an erroneous jury instruction. See N.C. R. App. P. 10(a)(4) (2025). Notably, it has become increasingly common to include instructions to the jury in the verdict sheet.

Indeed, the verdict sheet in this case directs the jury that “If you find the Defendant Guilty of First Degree Murder stop here” and “If you find defendant Guilty of Second Degree Murder you must unanimously find one or more of A, B, or C below.” These directions to the jury on the verdict sheet, which guide the jury to comply with

⁴ The dissenting opinion below is illustrative of this point. The dissent does not mention, *even once*, the “probable impact” requirement in its analysis.

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the instructions in the jury charge, certainly appear “instructional” as that word is understood in the context of Rule 10. *See id.*

Moreover, both this Court and the Court of Appeals have signaled that some issues not concretely identified as either evidentiary or instructional might still be subject to plain error review. *See, e.g., State v. Wiley*, 355 N.C. 592, 607 (2002) (process for selecting prospective jurors); *State v. Woodley*, 286 N.C. App. 450, 464 (2022) (procedure for the passing of jurors to the defendant during jury selection).

In an appropriate case, this Court may need to examine and harmonize this disparate caselaw. However, the present case, in which there is overlap between the jury instruction issues and those involving the verdict sheet, and in which defendant cannot satisfy the plain error test, is not the appropriate case for that endeavor.

Thus, assuming without deciding whether jury verdict sheets of any kind could receive plain error review, we hold that under the exacting standard articulated in *Reber*, defendant has failed to meet his burden.⁵

The trial court advised the jury that if it was not convinced beyond a reasonable doubt as to either first-degree murder theory, then it will “not return a verdict of guilty.” Additionally, before describing each charge, the trial court explicitly told the jury: “Under the law and evidence in this case[,] it is your duty to return one of the following verdicts: Guilty of first degree murder, or, guilty of second degree murder, or, guilty of voluntary manslaughter, *or not guilty*.” (Emphasis added.) Construed together, a reasonable juror would not take the trial court’s instruction to suggest that a guilty verdict as to either theory of first-degree murder was required.

The jury’s responses contained on the jury verdict sheet also confirm as much. The jury verdict sheet provided the jury with binary questions as to each charge. The format of the jury verdict sheet logically permitted the jury to find defendant “not guilty” by answering “No” as to each listed charge.

Here, however, the jury answered “Yes” to the first prompt—“Guilty of First Degree Murder.” The jury then proceeded to answer the jury verdict sheet’s two follow-up questions. The first follow-up question asked, “IF YOU ANSWER ‘YES’ [to ‘Guilty of First Degree Murder’], IS IT . . . On the basis of malice, premeditation and

⁵ Indeed, the majority agrees that defendant has not demonstrated prejudice under the plain error standard.

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deliberation?” To which the jury answered, “No.” The second follow-up question asked, “IF YOU ANSWER ‘YES’ [to ‘Guilty of First Degree Murder’], IS IT . . . Under the first degree felony murder rule?” To which the jury answered, “Yes.”

A common sense reading of the jury verdict sheet indicates that the jury understood they were entitled to find defendant “not guilty” by responding “No” to the binary questions. And the jury indicated its understanding by doing just that with respect to first-degree murder on the basis of malice, premeditation, and deliberation.

While the jury instruction and jury verdict sheet were not models of clarity, we have “[o]n numerous occasions” stated that “[w]here the charge as a whole presents the law fairly and clearly to the jury, the fact that isolated expressions, standing alone, might be considered erroneous affords no grounds for reversal.” *State v. Boykin*, 310 N.C. 118, 125 (1984) (quoting *State v. Jones*, 294 N.C. 642, 653 (1978)). Indeed, when confronted with similar facts, this Court discerned no error. *See State v. Chapman*, 359 N.C. 328, 380 (2005). For these reasons, it is not obvious to this Court that defendant has even established error, let alone plain error.

The evidence at trial aligns squarely with the jury’s verdict. Consequently, defendant fails to demonstrate prejudice. The trial evidence established that law enforcement officers discovered Ms. Watson dead in her apartment, where defendant had last been present. The forensic investigation found defendant’s fingerprints throughout Ms. Watson’s apartment. Ms. Watson died as a result of multiple blunt force injuries, causing six broken ribs and a brain injury. Forensic investigators uncovered Ms. Watson’s blood on the shorts that defendant was wearing when he was arrested. Shortly after neighbors explained that defendant and Ms. Watson had been previously overheard arguing about the vehicle, Ms. Watson’s Suzuki SUV was located in Chapel Hill with defendant nearby. Detectives located Ms. Watson’s debit card and expired driver’s license in defendant’s wallet. Defendant had pawned Ms. Watson’s cell phone the day before his arrest.

Thus, we are unpersuaded that a slightly altered jury instruction and accompanying jury verdict sheet would almost certainly have changed the outcome of defendant’s trial. Applying the more exacting prejudice standard articulated in *Reber*, we affirm the portion of the majority’s judgment below holding that the trial court did not commit plain error.

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B. Insufficiency of the Evidence

Defendant moved to dismiss at the close of the State's evidence and at the close of all evidence at trial. "Upon [a] defendant's motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied." *State v. Davenport*, 386 N.C. 454, 460 (2024) (quoting *State v. Fritsch*, 351 N.C. 373, 378 (2000)). Although, "if the evidence is sufficient only to raise a suspicion or conjecture as to either the commission of the offense or the identity of the defendant as the perpetrator of it, the motion should be allowed." *Id.* (extraneity omitted) (quoting *Fritsch*, 351 N.C. at 378).

When considering a sufficiency of the evidence challenge, an appellate court must "view the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences." *Fritsch*, 351 N.C. at 378–79. "The test for sufficiency of the evidence is the same whether the evidence is direct or circumstantial or both." *Id.* at 379. "Circumstantial evidence may withstand a motion to dismiss and support a conviction," *id.* (quoting *State v. Stone*, 323 N.C. 447, 452 (1988)), so long as "a reasonable inference of [the] defendant's guilt may be drawn from the circumstances," *id.*

Moreover, evidence is sufficient to support a conviction even where the circumstantial evidence requires making "an inference on an inference." *State v. Childress*, 321 N.C. 226, 232 (1987). Our Court overruled cases that held otherwise, because "[t]his is the way people often reason in everyday life." *Id.* Indeed, we routinely permit jurors to "rely on their own personal knowledge and experience which they have acquired in everyday life" to find the existence of a fact. *State v. Mitchell*, 336 N.C. 22, 29 (1994), *abrogated on other grounds by*, *State v. Rogers*, 371 N.C. 397 (2018). Accordingly, our courts permit a jury to determine the existence of a fact based on their in-court observations when the fact concerns "matter[s] of general knowledge and experience." *Mitchell*, 336 N.C. at 30; *see also, e.g., State v. Barnes*, 324 N.C. 539, 540 (1989) (holding that a jury was permitted to conclude that the defendant was at least four years older than the rape victim to convict of statutory rape); *Mitchell*, 336 N.C. at 29 (same, stating that "the jury may, based on its observations of the defendant, assess whether the defendant is older than twelve.").

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On appeal, defendant argues that this Court should affirm the Court of Appeals' holding that the State presented insufficient evidence of the value of the Suzuki SUV, because "*Holland* requires the State to prove the dollar amount of stolen goods for felony larceny." The Court in *Holland* reasoned that since the State offered no direct evidence of a 1975 Chrysler Cordoba automobile's value, the jury was left to speculate as to an essential element of the felony larceny charge. *Holland*, 318 N.C. at 610. The *Holland* Court therefore concluded there was insufficient evidence to justify the jury's finding that the value of the automobile exceeded the felony larceny statutory threshold. *Id.*

However, just a year later, our Court overruled *Holland's* understanding of what may be properly inferred from the evidence introduced at trial. *Childress*, 321 N.C. at 232. In doing so, this Court embraced the sound view that jurors are not required to dispose of their common sense merely because they are sitting in judgment in a criminal case. *See id.* (rooting its holding in "the way people often reason in everyday life"). For this reason, to the extent that *Holland* pronounced a rigid requirement for the State to *always* offer direct evidence of value to support a felony larceny charge, we find such a rigid requirement incompatible with our sufficiency of the evidence jurisprudence.

Instead, we hold that direct evidence of value is not required when the property at issue is so ubiquitous that the average juror, using his or her general knowledge and experience, can determine that the property's value is above the statutory threshold with a high degree of certainty. In short, when the value of property can fairly be determined by a jury's "common sense and the knowledge it has acquired through everyday experiences," direct evidence is not required. *Mitchell*, 336 N.C. at 29. Such circumstances especially arise when common knowledge and experience indicate that the value of the property at issue traditionally far exceeds the statutory threshold.

In such cases, circumstantial evidence adequately demonstrating the property's value may suffice for the State to meet its burden of producing substantial evidence. This holding aligns with the general principle that "[w]hatever the jury may learn through the ear from descriptions given by witnesses, they may learn directly through the eye from the objects described." *State v. Brooks*, 287 N.C. 392, 407 (1975) (extraneity omitted).

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At defendant's trial, the court instructed the jury on first-degree murder under the felony murder rule, relying exclusively on felony larceny of the Suzuki SUV as the underlying felony offense. Under North Carolina law, felony larceny requires that the value of the stolen property exceed one thousand dollars. N.C.G.S. § 14-72(a) (2025).

The jury was presented with evidence demonstrating that the Suzuki SUV seated four passengers and was still operable, in good condition, and only six years old. Provided the ubiquity of passenger motor vehicles and the prominence of the motor vehicle market in everyday American life, we conclude that the jury possessed the common knowledge and experience needed to infer from the circumstantial evidence presented that the value of the Suzuki SUV was at least more than one thousand dollars.

Our sufficiency of the evidence standard does not require the State to present direct evidence of value in cases where the property at issue is so ubiquitous that the average juror, using his or her general knowledge and experience, can determine that its value is above the statutory threshold with a high degree of certainty. The trial court correctly denied defendant's motion to dismiss. We therefore reverse the portion of the Court of Appeals' judgment holding that the State presented insufficient evidence to prove the underlying felony offense upon which defendant was convicted of first-degree murder.

III. Conclusion

We affirm the portion of the Court of Appeals' judgment holding that the trial court did not plainly err in its jury instruction and accompanying jury verdict sheet. However, we reverse the portion of the Court of Appeals' judgment holding that the State presented insufficient evidence of the value element of defendant's first-degree murder conviction based upon the felony murder rule. Consequently, we vacate the Court of Appeals' instructions on remand and uphold defendant's conviction.

AFFIRMED IN PART, REVERSED IN PART, AND VACATED IN PART.

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BERGER, J., concurring in part and dissenting in part

Justice BERGER concurring in part and dissenting in part.

Plain error review is a narrow exception to the preservation requirements of Rule 10(a) of the North Carolina Rules of Appellate Procedure, and this Court has specifically confined plain error review “to unpreserved instructional and evidentiary error” in criminal trials. *State v. Hicks*, 389 N.C. 567, 570 (2026); see *State v. Reber*, 386 N.C. 153, 163 (2024) (“[P]lain error is reserved for evidentiary or instructional errors.”). A verdict sheet is neither instructional nor evidentiary.

On its way to addressing the merits of defendant’s prejudice argument, the majority assumes without deciding that plain error review reaches an allegedly defective verdict sheet issue. But the first question the Court must answer is whether there was reviewable error. It is elementary that unpreserved arguments that fall outside our criteria for plain error review are waived. See N.C. R. App. P. 10; *Reber*, 386 N.C. at 163. Waived means there is nothing for us to review. There is no error to analyze, no prejudice to measure, and no probable impact to assess. The majority nonetheless issues what amounts to a questionable advisory opinion on the issue of prejudice.

The plain error standard was settled by *Reber*, where we reinforced both Rule 10 and *State v. Lawrence*, 365 N.C. 506 (2012). The majority’s failure to properly grapple with plain error review pulls a thread that will unravel the certainty this Court has worked to establish through our case law. Specifically, the majority cites Rule 10(a)(4), *State v. Wiley*, 355 N.C. 592, 607 (2002), and a Court of Appeals’ case for some reason, to suggest that plain error review is much more expansive than our recent case law has established. To the extent *Wiley* is inconsistent with *Reber*, it is no longer good law. The majority seems to understand this because it claims to be applying *Reber*’s “exacting standard.”

The majority states that North Carolina has never “conclusively applied plain error review to a jury verdict sheet.” The majority could easily, and accurately, say that application of the plain error standard as articulated in *Reber* precludes review of this issue. But the majority does not do so. Instead, without discussing N.C.G.S. § 15A-1237 and in contravention of our case law, the majority simply declares that jury verdict sheets may qualify for plain error review if they “contain[] language reinforcing an erroneous jury instruction.” But a verdict sheet is not a source of law

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BERGER, J., concurring in part and dissenting in part

to be applied by the jury, as it simply records the jury's decision. Even if a verdict sheet listed elements, provided a decision tree, or used legal terms, it would not shape how the jury applies the law—the instructions themselves fulfill that role.

Put another way, *if* there are erroneous instructions, any unpreserved arguments related to those instructions may be properly presented for plain error review. And *if* the verdict sheet contains some allegedly erroneous “language reinforcing” those instructions, we would consider that information only in addressing the probable impact of the erroneous instructions themselves. The majority's reasoning falls apart where, as here, there are no “erroneous jury instructions” that the verdict sheet could “reinforc[e].” Put simply, even under the majority's tortured reasoning, this case still does not present a plain error issue because the antecedent condition—an erroneous jury instruction—is not present.

The majority goes on to state that “this Court may need to examine and harmonize” the case law in this area. Indeed we will, beginning with this opinion. And the curious thing is that this is all senseless, because the majority essentially answers the question but declines to do so definitively. If this question about jury verdict sheets needs to be “harmonize[d],” why not do it now? If this Court is interested in providing clarity, just provide it now as we have done previously. *See State v. Cummings*, 352 N.C. 600, 613 (2000) (citing previous cases in which this Court declined to expand plain error review, and specifically “declin[ing] to extend application of the plain error doctrine to situations where a party has failed to object to statements made by the other party during jury voir dire. Defendant's failure to raise this issue during his trial constitutes waiver[.]”).

By walking back the certainty provided by *Reber*, the majority apparently intends to provide a wider path for litigants to argue plain error review. The message to the bar is unmistakable: the door is wide open to reimagine any unpreserved arguments as plain error. Litigants will cite the majority here not for what it holds today, but for what it assumes. And the Court of Appeals will be left to decide whether the assumption by the majority is an invitation to recast plain error review. It certainly appears that way.

Worse still, the majority's reasoning can be read to suggest *Reber* entirely supplants *Lawrence*. Is probable impact all that we must decide now? *Reber* implied no such thing, but the majority declines to engage. *Lawrence* should be the starting

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point for plain error review, and the first requirement should be reviewable error. Moreover, plain error review is to be “applied cautiously and only in the exceptional case[.]” *Lawrence*, 365 N.C. at 518 (quoting *State v. Odom*, 307 N.C. 655, 660 (1983)). The majority instead applies it today by assumption. That is hardly cautious or exceptional. It is a shortcut that trades a clear rule for lasting uncertainty.

I therefore concur in result only, and I specifically dissent from the portion of the majority opinion that suggests plain error review may extend beyond unpreserved instructional or evidentiary error.

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RIGGS, J., concurring

Justice RIGGS concurring.

I concur with the majority's determination that, under the exacting standard required for plain error review, the trial court did not plainly err in its jury instruction and accompanying jury verdict sheet. I also concur in the majority's determination that the State presented sufficient evidence to support Mr. Montanino's first-degree murder conviction.

I read the majority's holding to be narrow, only applicable to situations where the property whose value the State must prove is "so ubiquitous that the average juror, using his or her general knowledge and experience, can determine that the property's value is above the statutory threshold with a high degree of certainty." *See* majority *supra* Section II.B. I write separately to emphasize that direct evidence of value will be required in most cases and the State still bears the burden of proving the value element in criminal prosecutions. While the majority is correct that our caselaw supports making "inferences on inferences" to support a conclusion that defendant committed the offenses charged, such inference-stacking is only appropriate where the inference naturally arises from the circumstantial evidence. *State v. Childress*, 321 N.C. 226, 232 (1987) ("There is no logical reason why an inference which naturally arises from a fact proven by circumstantial evidence may not be made."). While we have said that jurors can "rely on their own personal knowledge and experience which they have acquired in everyday life" to find the existence of a fact, we have also held that the jury's ability to determine the existence of a fact in issue based on its observations "is not without limitation." *State v. Mitchell*, 336 N.C. 22, 29 (1994), *abrogated on other grounds by*, *State v. Rogers*, 371 N.C. 397 (2018).

As the majority recognizes, certain property items are so ubiquitous that a jury can determine the existence of a fact in issue to a high degree of certainty, but I want to highlight a case of ours that helps establish the narrowness of the majority's rule. In *Mitchell*, this Court concluded that a jury's finding of a certain weight of marijuana was unreliable where the State did not provide sufficient direct evidence and the weight of a given quantity of marijuana is not a matter of general knowledge and experience. 336 N.C. at 29–30. This Court contrasted its holding in *Mitchell* with the holding in *State v. Barnes*, 324 N.C. 539 (1989), in which this Court concluded

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that the jury may, based on its observations of the defendant, determine the defendant's age. *Mitchell*, 336 N.C. at 29–30; *see also Barnes*, 324 N.C. at 540. As we explained in *Mitchell*, every adult experiences dealing with age and that certain characteristics are associated with various ages as matters of common knowledge, but the same could not be said regarding the weight of various quantities of marijuana. 336 N.C. at 29–30. A jury cannot find the existence of a fact based solely on its in-court observations when it lacks the requisite knowledge or expertise necessary to infer the fact from the evidence in the record. *Id.* at 29. In other words, there must still be a logical link between the record and the inference, otherwise we invite speculation from the jury. *See State v. Everett*, 328 N.C. 72, 77 (1991) (holding that the physical evidence and testimony permitted a reasonable inference that defendant committed the offenses on the dates within the ranges set forth in an indictment); *State v. Powell*, 299 N.C. 95, 102 (1980) (holding there was no substantial evidence giving rise to the reasonable inference that the defendant took the objects from the victim's presence by use of a dangerous weapon, an essential element of robbery with a dangerous weapon). I caution that overapplication of the majority's rule by the State or lower courts could invite subjective and incorrect assumptions about which property items are ubiquitous or what the average juror can determine regarding value where value is an essential element of the crime.

Here, the State met its burden by presenting sufficient evidence that Ms. Watson's vehicle's value exceeded the low statutory threshold of \$1,000 for felony larceny. The State presented the make, model, and year of the vehicle—a late model SUV. There was testimony evidence that the vehicle was operable, and that it had been moved from Ms. Watson's residence in Durham, driven to Alamance County multiple times around the time of the crime, and ultimately found in Chapel Hill. The evidence was existing and real as opposed to “seeming or imaginary.” *See Powell*, 299 N.C. at 99 (explaining the standard to apply when reviewing for whether there is substantial evidence of each essential element of the offense charged). In other words, it was not mere speculation whether Ms. Watson's vehicle was operable or what type of vehicle it was. Thus, I agree with the majority's explanation that the State's evidence, coupled with the ubiquity and prominence of motor vehicles in everyday life, allows the jurors to infer, based on their common knowledge and experience, that the vehicle's value was over \$1,000.

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Because the threshold value for felony larceny is so low, the narrow facts of this case do not test the bounds of the ubiquity of a piece of property or jurors' familiarity with an item's value. Nonetheless, we will likely confront the bounds of this rule outside the narrow facts of this case. Consider a hypothetical where Mr. Montanino had stolen the catalytic converter from Ms. Watson's vehicle instead. Most people know that an operable late model SUV will be worth more than the very low threshold of \$1,000, but if a catalytic converter is stolen from a vehicle, even if it is a common make and model, I do not believe that the majority's rule can support a presumption that many jurors understand the value of the vehicle's parts.

In conclusion, the rule emerging from this case is fact-bound and narrow. I concur with the result but emphasize that nothing about today's result should be read as relieving the State of its duty in criminal cases to produce evidence of the value of stolen items.

Justice EARLS joins in this concurring opinion.