

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-436

Filed 19 August 2026

Pender County, Nos. 21CR050907-700, 21CR051060-700, 21CR051061-700,
21CR051062-700

STATE OF NORTH CAROLINA

v.

JARAD D. NYE, Defendant.

Appeal by defendant from judgment entered 1 March 2024 by Judge R. Kent Harrell in Superior Court, Pender County. Heard in the Court of Appeals 11 March 2026.

Attorney General Jeff Jackson, by Special Deputy Attorney General Ellen A. Newby, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Kathryn L. VandenBerg, for defendant-appellant.

STROUD, Judge.

Defendant Jarad D. Nye appeals several convictions for statutory sexual crimes. Defendant contends that his trial counsel had a conflict of interest and his constitutional rights were violated based on a letter that a former client wrote to the Assistant District Attorney; that the trial court erred by failing to intervene *ex mero*

mutuo during *voir dire*; and that the trial court committed plain error by allowing his videotaped interview with law enforcement to be shown to the jury. Defendant has failed to demonstrate a conflict of interest based on the letter. Defendant has failed to demonstrate plain error as to the *voir dire* or the evidence of the video of his interview. Defendant received a fair trial, free of reversible error or plain error.

I. Procedural Background

Defendant was indicted for multiple counts of statutory sexual crimes. We need not address the graphic factual details of Defendant's crimes as they are not relevant to the issues on appeal.

As relevant to Defendant's appeal, for his first issue, Defendant was not present in the courtroom when counsel and the trial court discussed a letter from a fellow jail inmate, who was also a former client of his attorney. The inmate had written a letter to the Assistant District Attorney about other matters, but he mentioned, at the end of the letter, that Defendant may attempt to disrupt his trial to force his counsel's removal. As to issue two, during *voir dire*, Defendant contends that the State asked potential jurors to put themselves in the victim's shoes, asked them to promise to be patient with the victim's testimony, and questioned if the jurors would feel comfortable talking about their sexual experiences in court. And as to issue three, the State presented a video of a law enforcement interview of Defendant, in which Defendant invoked his right to remain silent.

The jury found Defendant guilty of all charges against him, and the trial court

entered judgments. Defendant appeals.

II. Conflict of Interest

Defendant argues that the

trial court and defense counsel's failure to tell [Defendant] that they received a letter from defense counsel's former client predicting [Defendant's] disruptive behavior: (1) created a conflict of interest that the trial court was required but failed to resolve, and (2) violated [Defendant's] right under the North Carolina Constitution to be present at all stages of his trial.

Specifically, as to the constitution, Defendant contends that his attorney's failure to reveal the letter to him during the trial created a conflict of interest. And he claimed that the trial court failed to resolve this alleged conflict, thus violating his 6th Amendment right to representation by counsel free of conflicts of interest.

We first review the factual background of the events leading up to the Defendant's removal from the courtroom and the discussion of the letter. Defendant was present for pretrial motions at the beginning of jury selection on 27 February 2024. While the potential jurors were out of the courtroom, the trial court asked if either party had any matters to address before they returned. Defendant's counsel said Defendant wanted to address the court. Defendant said he had seen his counsel on 22 February 2024, a day after he had had an unidentified surgical procedure. He said he was in pain and wanted to continue his trial, but his counsel had told him that it would not be continued, so he said "okay." He had waited "all day Friday" to see if his counsel would file a motion to continue, but he did not, so on Saturday he

“wrote a note to the State Bar” saying he had asked his counsel to file the motion. On the previous day, Monday, the first day of trial, he asked again, and his counsel “ignored it.” He also said he told his counsel he was “in severe pain.” For these reasons, Defendant claimed “it’s a conflict of interest.”

The trial court was already aware of Defendant’s medical issues. The judge announced, “for the record,” “last week [he] prepared an order” and got a “copy of [Defendant’s] medical records” to confirm what procedures Defendant had and what medication he was on. His prescription pain medications had ended and, at the time of trial, he was on “pain management with regular over-the-counter medications.” The trial judge also noted that when they were in court “a week ago,” he had attempted to discuss with Defendant whether he wanted the trial continued and he had refused to answer the court’s questions.¹

After this, Defendant attempted to argue with the trial court, and the court stated that “if you try to interrupt these proceedings and disrupt this process, you will be removed from this courtroom.” Defendant persisted in arguing with the trial court, and after the trial court reiterated its ruling that “It’s not a conflict of interest,” Defendant spit on his attorney. The trial court had Defendant removed from the

¹ On 16 February 2024, the trial court had Defendant “brought over for admin court” because his trial was scheduled for 26 February 2024 and Defendant was to have an outpatient medical procedure “next week.” The trial court wanted to “make sure [Defendant was] okay with [his] trial still going forward” and did not want to continue the case without Defendant’s consent. Defendant did not answer the court’s questions but stated that “the only thing” he wanted to say was that he was in severe pain and wanted to go back to his cell. The trial court announced the trial would not be continued.

courtroom.

After Defendant had been removed, the court stated, for the record, “some information that [it] became aware of.” The court said the State had received a letter from an inmate in the jail with Defendant. The State had also provided a copy of the letter to Defendant’s counsel, who confirmed that the letter was written by one of his former clients. The letter was dated 29 November 2023 and was addressed to ADA Ms. Amy White.² It was described as “a long letter” but, at the very end, it said “P.S. [Defendant] plans to start an argument while during jury selection in order to get [his counsel] taken off his case. Please remember all these things to look for from him.”

The court then reviewed on the record its previous rulings and the events leading up to Defendant’s removal from the courtroom and asked if Defendant’s counsel had “anything else on behalf of [Defendant].” Defendant’s counsel said he did not, but advised the court he would like to “place some things on the record.” He stated that he was aware of the letter from the fellow inmate but did not tell Defendant because “it might create difficulties for him and [the other inmate] in the jail.” He had represented the other inmate before and knew him. Defense counsel explained that Defendant had not requested that he file a motion to continue. In fact, the day before, counsel had asked Defendant “if he needed anything,” and he did not

² Our record does not reveal exactly when the trial court or Defendant’s counsel became aware of the letter, but it appears that both were aware of it at some point before the discussion in court.

request a continuance. They discussed some notes from trial preparation meetings but that was all. Defendant's counsel provided this information to address Defendant's conflict of interest claim.

Defendant's argument seems directed mostly to the trial court's failure to take sufficient action to resolve an alleged conflict of interest between Defendant and his trial counsel, although his argument also mentions ineffective assistance of counsel. But Defendant does not clearly argue ineffective assistance of counsel, so we need not address that issue.

Defendant's argument is somewhat convoluted, but in summary, he claims that a lack of disclosure about a letter his attorney received before trial—from a former client and jail inmate of Defendant's regarding potential disruptions Defendant may make—violated his constitutional right to be present at all stages of the trial because he was not present when the letter was discussed. According to Defendant, somehow, the trial court's or his counsel's failure to disclose the warning in the letter of his plans to disrupt the trial caused him to disrupt the trial or caused him not to abandon his plans to disrupt the trial, thus leading him to proceed with his plan to disrupt the trial and his removal before the letter was discussed.³ Defendant goes on to argue that his ultimate decision not to testify in his own defense

³ Defendant also argues that "counsel's silence prevented [Defendant] from receiving crucial advice from counsel warning him against any plan to disrupt proceedings. Additionally, by remaining silent about the letter, counsel allowed [Defendant] to speak with the judge without knowing the judge had information that would predispose him to view [Defendant's] conduct as intentionally disruptive."

was influenced by this alleged error, since he would be shackled and behind plexiglass if he chose to testify. Defendant's description of the relevant events at trial in his brief leaves out most of the relevant context, but we have gleaned it from the transcripts.

We also note that Defendant does not raise any argument on appeal challenging the court's removal of him from the trial after he persisted in arguing with the trial court and spat on his own counsel. We therefore assume the trial court's removal of Defendant was proper.

State v. Williams explains the proper analysis of an issue of an alleged conflict of interest arising during trial:

A defendant's right to effective assistance of counsel includes the right to representation that is free from conflicts of interest. A conflict of interest arises where the representation of one client will be directly adverse to another client or the representation of one or more clients may be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer. Our courts apply the same analysis whether the conflict issue arises because of current or former clients. . . .

Turning to the specific analysis of such conflicts, our Courts analyze ineffective assistance of counsel claims based on conflicts under *Cuyler v. Sullivan*, 446 U.S. 335, 100 S. Ct. 1708, 64 L.Ed.2d 333 (1980), rather than employ the standard ineffective assistance of counsel analysis under *Strickland*. The *Sullivan* and *Strickland* standards differ on whether the defendant always must show prejudice to be entitled to relief; under *Strickland*, a defendant must show prejudice, but under *Sullivan* a defendant who shows an actual conflict of interest may not be required to demonstrate prejudice.

The test of whether to apply *Sullivan*—and not require a showing of prejudice—or *Strickland*—with a required showing of prejudice—focuses on the level of notice given to the trial court and the action taken by that court in regard to the conflict issue. When the court knows or reasonably should know of a particular conflict, that court must inquire into the conflict. If the trial court fails to inquire into the conflict or the trial court’s inquiry is inadequate or incomplete, reversal is automatic only if the defendant objected to the conflict issue at trial. If the defendant did not object to the conflict issue and the trial court failed to adequately conduct the required inquiry, prejudice will be presumed under *Sullivan* only if a defendant can establish on appeal that an actual conflict of interest adversely affected his lawyer’s performance. However, if a defendant is unable to establish an actual conflict causing an adverse effect, he must show that he was prejudiced in order to obtain relief.

Thus, in reviewing the alleged conflict issue, we employ a multi-step test. First, we ask whether the trial court had notice of the conflict such that it was required to inquire into the conflict. Second, we determine whether the trial court conducted an adequate inquiry into the conflict. If the trial court conducted an adequate inquiry, our review ends. But if the trial court did not conduct an adequate inquiry, we third consider whether the defendant objected to the conflict issue at trial; if the defendant objected to the conflict, we must reverse. If, however, the defendant did not object to the conflict, we move to the fourth step and determine whether the defendant can establish an actual conflict of interest adversely affected his lawyer’s performance. If a defendant can establish such adverse performance, we presume prejudice. If a defendant cannot establish adverse performance, we move to the fifth and final step and determine whether the defendant can show prejudice and thus obtain relief.

285 N.C. App. 215, 232–34, 877 S.E.2d 105, 119–20 (2022) (citations and quotation marks omitted).

Thus, per *Williams*, we first consider whether the trial court had notice of a potential conflict of interest. *See id.* at 233, 877 S.E.2d at 120. The trial court had notice of the letter, but Defendant has not explained how the trial court would be on notice of his alleged conflict of interest with his counsel *based on the letter*. The letter itself is not in our record, and apparently it is a long letter about matters unrelated to Defendant's case, with a *postscript* warning of Defendant's disruptive plans.

Defendant contends that his counsel did not disclose the letter to him because of some sort of prior loyalty to the other inmate, whom Defendant's counsel had represented in the past, but the transcript and record simply do not support this argument. Defendant argues that

counsel's loyalty to and concern for his former client interfered with his duty to [Defendant] to fully apprise him of information the State and trial court had that could be used against him. Further, counsel's silence prevented [Defendant] from receiving crucial advice from counsel warning him against any plan to disrupt proceedings. Additionally, by remaining silent about the letter, counsel allowed [Defendant] to speak with the judge without knowing the judge had information that would predispose him to view [Defendant's] conduct as intentionally disruptive. The court's quick and severe reaction to being interrupted (threatening removal) evidenced this predisposition. The disruption that ultimately occurred (spitting) worsened [Defendant's] circumstance at trial considerably.

In other words, Defendant seeks to blame his own spitting on his counsel on his lack of knowledge that the trial court knew that he may be intentionally disruptive.

The record shows that the reason Defendant's counsel did not disclose the

letter was to avoid difficulties between Defendant and the other inmate in jail. If the letter caused conflict between them in the jail, this could harm Defendant just as much, if not more, than the letter-writer. The trial court was aware of this perfectly reasonable explanation, and there is nothing in our record to suggest to the trial court or to this Court that Defendant's counsel's representation of Defendant was limited in any way by his prior representation of the letter-writer.

Defendant has not demonstrated that his counsel's prior representation of the letter-writer had any effect on his representation of Defendant in this case.

A conflict of interest arises where the representation of one client will be directly adverse to another client or the representation of one or more clients may be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer. Our courts apply the same analysis whether the conflict issue arises because of current or former clients.

Id. at 232, 877 S.E.2d at 119 (citation and quotation marks omitted). There is no indication of when Defendant's counsel had previously represented the letter-writer or the nature of his representation. His past representation of the letter-writer was not "directly adverse" to Defendant in any way, nor was his counsel's representation "materially limited" by any responsibility to the letter-writer. *Id.* The trial court did not know and could not reasonably know of the "particular conflict" Defendant has argued in this appeal, so the trial court had no duty to "inquire into the conflict." *Id.* at 232, 877 S.E.2d at 120.

Even before any discussion of the letter, Defendant had claimed that he had a conflict with his counsel because his counsel had not filed a motion to continue the trial based on Defendant's alleged "severe pain" following his surgical procedure. The trial court carefully addressed that claim of a conflict of interest and denied Defendant's motion to continue. The only reason Defendant was not present in the courtroom when the letter was discussed was that he had disrupted the proceedings sufficiently that he had to be removed—a ruling he does not challenge on appeal. The only reason he was not present at all stages of the proceeding was his own misconduct.

And the letter was not the trial court's first knowledge of Defendant's tendency to disrupt and seek to delay proceedings. Defendant's trial counsel was his third appointed for this case. Defendant had filed bar complaints against his first two appointed attorneys. On 30 June 2023, the Honorable Judge George F. Jones entered an order allowing one of Defendant's previous attorneys to withdraw and made "supplemental findings" describing Defendant's actions and noting "that [D]efendant's behavior represents a display and pattern of conduct constituting a serious obstruction of these proceedings." Judge Jones had considered concluding that Defendant had forfeited his right to appointed counsel but "considering the severity of the pending charges," declined to deny a new appointed counsel. Judge Jones also noted that he had "personally addressed . . . [D]efendant this date on the [r]ecord advising that the right to counsel is not absolute and may under certain

circumstances be deemed forfeited by his conduct.”

Thus, our analysis of Defendant’s argument regarding a conflict of interest ends at the first step under *Williams*. *Id.* at 233, 877 S.E.2d at 120. The trial court was not aware of and would not reasonably be aware of the “particular conflict” that Defendant has argued on appeal based on the letter from his fellow inmate. The trial court did not err by failing to conduct further inquiry.

Defendant asserts that that “[e]ven if this Court declines to reverse based on the conflict of interest discussed above, [he] is entitled to a new trial because his right under the North Carolina [C]onstitution to be present at trial was violated before he was removed.” This argument is dependent on our first holding that his counsel had a conflict of interest which the trial court failed to resolve. As discussed above, there was no conflict of interest. Therefore, Defendant’s argument fails.

III. *Voir Dire*

Defendant next contends that “[t]he trial court reversibly erred by failing to intervene *ex mero motu* when, during *voir dire*, the State argued its case and staked out the jurors by extracting promises from them to judge . . . [a victim’s] credibility in a way that favored the State.” In *State v. Lovette*, this Court stated,

[i]n reviewing any jury *voir dire* questions, an appellate court examines the entire record of the *voir dire*, rather than isolated questions. It is well established that the right of counsel to inquire into the fitness of prospective jurors is subject to close supervision by the trial court. The regulation of the manner and the

extent of the inquiry rests largely in the discretion of the trial court. The exercise of such discretion constitutes reversible error only upon a showing by the defendant of harmful prejudice and clear abuse of discretion by the trial court.

225 N.C. App. 456, 463, 737 S.E.2d 432, 437 (2013) (citation and brackets omitted).

Citing *State v. Ward*, 354 N.C. 231, 250, 555 S.E.2d 251, 264 (2001), Defendant asserts that the State's *voir dire* questions "so infected the trial with unfairness that they rendered the convictions fundamentally unfair." *Lovette* provides guidance about appropriate *voir dire* questions:

In *Jones*, our Supreme Court summarized the bounds of permissible jury *voir dire* questions:

On the *voir dire* of prospective jurors, hypothetical questions so phrased as to be ambiguous and confusing or containing incorrect or inadequate statements of the law are improper and should not be allowed. Counsel may not pose hypothetical questions designed to elicit in advance what the juror's decision will be under a certain state of the evidence or upon a given state of facts. . . . The court should not permit counsel to question prospective jurors as to the kind of verdict they would render, or how they would be inclined to vote, under a given state of facts.

Hypothetical questions that seek to indoctrinate jurors regarding potential issues before the evidence has been introduced and before jurors have been instructed on applicable principles of law are similarly impermissible. . . . Questions designed to measure a prospective juror's ability to follow the law are proper within the context of jury

selection *voir dire*.

225 N.C. App. at 464, 737 S.E.2d at 438 (citation omitted).

The State argues that Defendant does not identify any specific questions that he contends are improper but generally summarizes questions over a range of ten pages of the transcript. However, this Court is required to examine “the entire record of the *voir dire*, rather than isolated questions.” *Id.* On these questions, Defendant argues that the State asked the jury to put itself in the victim’s shoes and promise to be patient with the victim’s testimony. The State also questioned if the jurors would feel comfortable talking about their sexual experiences in court.

Defendant’s argument mischaracterizes the questions and overlooks the nature of the evidence and charges in this case. The evidence involves sexual assaults of a child. The victim was 14 years old when the events occurred and 16 at trial. Some of the questions Defendant characterizes as asking the jury to put itself “in the victim’s shoes” and to be patient were seeking to make sure the jurors would not unfairly judge the victim’s demeanor while testifying about extremely disturbing sexual crimes. In this type of case, counsel must ask some uncomfortable questions during *voir dire* to ensure the jurors will be able to consider the evidence fairly and impartially.

The questions to and answers from Prospective Juror No. 10 leading up to the first portion of the *voir dire* Defendant cites demonstrate how the questions developed. Prospective Juror No. 10 revealed that someone “very, very close” to the

juror “was drugged and raped” in high school. The juror also mentioned that they had a young child, and based on their experiences, they could not be impartial. The prosecutor noted, “this brings up a really good point” and continued that, in particular, for a person who is a parent or is close to young relatives, “it can be a hard topic to talk about and discuss.” After further questioning, Prospective Juror No. 10 confirmed that “I don’t even know how I would be able to be impartial.” Then, the State asked by show of hands if any other jurors had similar experiences or concerns as Prospective Juror No. 10. Several potential jurors responded that they did. The State followed up with more questions, including

Does anybody here have any preconceived notions about how a victim should act if they’re sexually assaulted? What about when a victim is testifying, do you have any preconceived notions about how a victim should testify? . . . if I were to ask you – and don’t worry, I’m not going to. But if I were to ask you to stand up and describe your last sexual encounter to the jury, do you think you could?

Prospective Juror No. 6 responded, “If I was ordered to maybe, but I wouldn’t enjoy it.” The State then asked, “Can you imagine asking a child to do that in front of you?” The response was, “no.”

Citing *State v. Maness*, 363 N.C. 261, 269–70, 677 S.E.2d 796, 802 (2009), Defendant also argues that it is improper for counsel to “pose hypothetical questions designed to elicit in advance what the juror’s decision will be under a certain state of evidence or upon a given state of fact.” But Defendant does not identify any “hypothetical questions” in the *voir dire* here. Overall, considering the questions in

context, the State did not “extract promises” from the jurors to treat the victim’s testimony as credible to reach a particular result.

The State was addressing the sensitive nature of the evidence in this case. In his brief, Defendant acknowledged that credibility is for the jury to determine, which is exactly what the trial court instructed. We conclude that the trial court did not abuse its discretion by failing to intervene *ex mero motu*. *Ward*, 354 N.C. at 250, 555 S.E.2d at 264. Defendant has not shown that the State’s questions “so infected the trial with unfairness that [it] rendered the conviction fundamentally unfair.” *Id.*

IV. Post-Miranda Interview

Lastly, Defendant contends that “[t]he State played [the] entire post-*Miranda* interview of . . . [him] for the jury, including . . . [his] invocation of his right to remain silent and [an officer’s] comments about that right. That was plain error.” Defendant essentially claims that his right to remain silent was placed in a negative light before the jury.

[T]he North Carolina plain error standard of review applies only when the alleged error is unpreserved, and it requires the defendant to bear the heavier burden of showing that the error rises to the level of plain error. To have an alleged error reviewed under the plain error standard, the defendant must specifically and distinctly contend that the alleged error constitutes plain error. Furthermore, plain error review in North Carolina is normally limited to instructional and evidentiary error.

...

The plain error rule is always to be applied cautiously and only in the exceptional case where, after reviewing the entire record, it

can be said the claimed error is a fundamental error, something so basic, so prejudicial, so lacking in its elements that justice cannot have been done, or where the error is grave error which amounts to a denial of a fundamental right of the accused, or the error has resulted in a miscarriage of justice or in the denial to appellant of a fair trial or where the error is such as to seriously affect the fairness, integrity or public reputation of judicial proceedings or where it can be fairly said the instructional mistake had a probable impact on the jury's finding that the defendant was guilty.

State v. Lawrence, 365 N.C. 506, 516–17, 723 S.E.2d 326, 333 (2012) (citations and quotation marks omitted).

Here, the evidence against Defendant was overwhelming and included: the testimony of the minor victim to the multiple acts of sexual crimes Defendant forced upon her; underwear given by Defendant to the victim; testimony from the victim's mother who had walked in on Defendant assaulting; evidence of male DNA on the victim; and nude photos of the victim found on Defendant's phone and taken at Defendant's house on his mattress. The brief mention in the video of Defendant's right to remain silent did not have a probable impact on the jury's finding of guilt. *See id.*

V. Conclusion

For the foregoing reasons, we conclude there was no error and no plain error.
NO ERROR; NO PLAIN ERROR.

STATE V. NYE

Opinion of the Court

Judges ARROWOOD and WOOD concur.

Report per Rule 30(e).