

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-1051

Filed 2 September 2026

Dare County, No. 22CR322960-270

STATE OF NORTH CAROLINA

v.

ADRIAN ANDRE HUMPHREY

Appeal by Defendant from judgment entered on 13 March 2025 by Judge Jerry R. Tillett in Dare County Superior Court. Heard in the Court of Appeals 13 August 2026.

Attorney General Jeff Jackson, by Special Deputy Attorney General Zachary K. Dunn, for the State.

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

WOOD, Judge.

Adrian Humphrey (“Defendant”) appeals from a judgment entered following a jury verdict finding him guilty of death by distribution of a controlled substance. On appeal, Defendant contends the trial court erred by: (1) allowing thirteen jurors to sit together to deliberate Defendant’s case, and (2) assigning prior record level points that were unproven by the prosecution. After careful review of the record, we conclude the trial court erred by allowing thirteen jurors to sit together to deliberate Defendant’s case. Accordingly, we reverse and remand for a new trial.

I. Factual and Procedural Background

On 10 March 2022, Defendant allegedly sold fentanyl and cocaine to David Saunders (“Saunders”) and Chuck Seymour (“Seymour”). According to Saunders, Dallas Twyne (“Dallas”) and his wife Caitlyn Twyne (“Caitlyn”) reached out to him on the evening of March 10th and asked if he was interested in acquiring drugs with them. Saunders agreed, and the three of them drove to Seymour’s house because “he knew where [they] were going” to get the drugs. The four friends drove into downtown Elizabeth City. Dallas and Caitlyn provided the money while Saunders and Seymour conducted the transaction with Defendant, buying both fentanyl and cocaine.

After acquiring the drugs, the group dropped off Seymour at his house before the other three returned to Dare County. As Saunders drove Dallas’s truck back to Dare County, he, Dallas, and Caitlyn each did a “line” of the recently purchased drugs. Saunders then parked the truck in a church parking lot near his home and made sure the couple was awake before walking home. Approximately forty-five minutes later, Catilyn called Saunders and told him Dallas was not breathing. Saunders returned to the parking lot, called 911, and proceeded to give Dallas CPR until law enforcement arrived.

Dallas was revived by first responders but died at the hospital in the early morning hours of 11 March 2022. The medical examiner testified Dallas’ cause of death was a fentanyl overdose.

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On 24 October 2022, Defendant was indicted on a charge of death by distribution of controlled substances. The case came on for trial during the 10 March 2025 criminal trial session of Dare County Superior Court.

After the close of all evidence and closing arguments by the parties, the trial court instructed the jury. This included the instruction, “I’ll instruct you that a verdict is not a verdict until all 12 jurors who go back to the room to deliberate agree unanimously as to what your verdict will be.” The trial court eventually released the jury saying, “So go now at this time and proceed first about the business of selection of a foreperson until you are further instructed.” The twelve jurors and one alternate juror were escorted to the jury room at 4:05 p.m.

The trial court then asked the attorneys, “are there requests for additional [] clarification, anything else necessary and appropriate to give this jury a full, a fair, and an accurate charge, from the State?” After both attorneys stated they had no requests, the trial court instructed the bailiff,

THE COURT: Mr. Bailiff, I’m going to ask that you knock on the door of the jury room, open the door and place this blank and clean tablet, together with the envelope containing the verdict sheet and the pen, in the center of the table and instruct our jurors only this, to begin deliberations.

Once you have completed that duty, please return and report. Parties -- well wait just a second. Duty performed?

THE BAILIFF: Yes, sir. And they have selected a foreperson.

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THE COURT: I'm sorry?

THE BAILIFF: They have selected a foreperson.

THE COURT: Okay. Parties may be at ease until return of the jury.

The transcript notes that jury deliberations began at 4:07 p.m.

Nineteen minutes later, at 4:26 p.m. the trial court held an off-the-record discussion with the attorneys. The trial court then stated, "[b]ring him in and then bring all of our jurors in." The jury was returned to the courtroom at 4:28 p.m. The trial court then questioned the alternate juror.

THE COURT: Mr. Beasley, you were not foreperson, were you?

ALTERNATE JUROR: Excuse me?

THE COURT: You were not the foreperson, were you?

ALTERNATE JUROR: No.

THE COURT: All right. You are excused, sir.

The alternate juror was excused at 4:29 p.m. The trial court then went on to instruct the jury:

THE COURT: Ladies and gentlemen, I'm going to ask that you restart, completely anew, your deliberations. I had intended for only 12 jurors to be back, there were 13. So you start brand new all over again. If you are able to understand and follow those instructions, please raise your hand. Thank you. If you are unable to understand or follow those instructions, please raise your hand. Thank you. The record should reflect, as to the Court's first inquiry, each and every juror raised his or her hand. As to

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the Court's subsequent inquiry, no juror raised his or her hand. At this time you -- bring that to me. Go to the jury room and await further instructions, which may be continue your deliberations or begin deliberations.

The jury returned to the jury room at 4:29 p.m. The trial court then asked if either attorney had any concerns, to which both responded they did not. The trial court then requested the bailiff instruct the jury to begin deliberations.

At 4:36 p.m. the trial court received a request from the jury for a written copy of the law and a definition of proximate cause. In response, the trial court returned the jury to the courtroom at 4:39 p.m. and re-read the instruction on the offense of death by distribution of certain controlled substances. The jury returned to the jury room for deliberations at 4:44 p.m. At 4:54 p.m. the jury announced it had reached its verdict finding Defendant guilty. The trial court sentenced Defendant to a minimum of 110 and maximum of 144 months of imprisonment. Defendant gave oral notice of appeal in open court.

II. Analysis

On appeal, Defendant contends the trial court erred by: (1) allowing thirteen jurors to sit together and deliberate Defendant's case, and (2) assigning prior record level points that were unproven by the prosecution.

A. Jury Composition

Defendant argues on appeal that the presence of the alternate juror in the jury room during deliberations violated his N.C. Const. art. I, § 24 right to a jury. We

agree.

Our Supreme Court has repeatedly held “issues related to the structure of the jury that found defendant guilty were preserved notwithstanding defendant’s failure to object at trial.” *State v. Chambers*, 387 N.C. 521, 524, 915 S.E.2d 96, 99 (2025); *see also State v. Bindyke*, 288 N.C. 608, 627, 220 S.E.2d 521, 531 (1975), *State v. Bunning*, 346 N.C. 253, 257, 485 S.E.2d 290, 292 (1997). This is because, “the jury is perhaps the hallmark of the American criminal justice system.” *Chambers*, 387 N.C. at 524, 915 S.E.2d at 99. Therefore, notwithstanding Defendant’s failure to raise the issue in the trial court, we consider it now on appeal.

“This Court reviews de novo a claim of constitutional error by the trial court. Under de novo review, this court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Grant*, 293 N.C. App. 457, 458, 900 S.E.2d 408, 410 (2024) (cleaned up).

Structural error is a rare form of constitutional error resulting from structural defects in the constitution of the trial mechanism which are so serious that a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence. North Carolina courts apply a form of structural error known as error per se. Error per se is automatically deemed prejudicial and thus reversible without a showing of prejudice.

State v. Wilson, 301 N.C. App. 546, 548, 923 S.E.2d 864, 866 (2025) (cleaned up).

Our Supreme Court’s controlling precedent comes from *State v. Bindyke* in which the Court ruled that “the presence of an alternate juror in the jury room after

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a criminal case has been submitted to the regular panel of twelve is always error.” *Bindyke*, 288 N.C. at 623, 220 S.E.2d at 531. The Court opined that a trial court could recall the jury and ask them a singularly limited question of whether there had been any discussion of the case, if the answer was yes then the trial court is required to declare a mistrial. “No inquiry into the extent or nature of the deliberations is permissible.” *Id.* at 629, 220 S.E.2d at 534. Based on *Bindyke* and its progeny the alternate juror’s presence during jury deliberations is a violation of N.C. Const. art. I, § 24 and constitutes reversible error *per se.* *Id.* at 627, 220 S.E.2d at 534; *see also State v. Rowe*, 30 N.C. App. 115, 117, 226 S.E.2d 231, 232 (1976) (“We hold that at any time an alternate is in the jury room *during deliberations* he participates by his presence and, whether he says little or nothing, his presence will void the trial.”); *State v. Godwin*, 95 N.C. App. 565, 569, 383 S.E.2d 234, 236 (1989) (citation and quotation omitted) (“The rule in this State is that at anytime an alternate is in the jury room *during deliberations* he participates by his presence and, whether he says little or nothing, his presence will void the trial.”); *State v. Jernigan*, 118 N.C. App. 240, 246, 455 S.E.2d 163, 167 (1995) (“It is well settled that the presence of an alternate juror in the jury room *during deliberations* constitutes reversible error *per se.*”).

The State contends our Supreme Court’s recent holding in *State v. Chambers*, which held N.C. Gen. Stat. § 15A-1215(a) allowing for the substitution of a juror after deliberations have begun was constitutional, overruled the relevant portions of

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Bindyke that would impact the present case. *Chambers*, 387 N.C. at 527, 915 S.E.2d at 100. The State misconstrues our Supreme Court’s holding in *Chambers*.

Not only does our Supreme Court’s opinion in *Chambers* not explicitly overrule *Bindyke*, it states:

we conclude that [N.C. Gen. Stat. § 15A-1215(a)]’s unconstitutionality has not been shown beyond a reasonable doubt. Indeed, although it contemplates the substitution of alternative jurors, it provides two critical safeguards that ensure that the twelve-juror threshold remains sacrosanct. Not only does subsection 15A-1215(a) provide that “*in no event* shall more than twelve jurors participate in the jury’s deliberations”; it also requires trial courts to instruct juries to “begin deliberations anew” if an alternative juror is substituted after jury deliberations have begun. This requirement preserves the statute’s constitutionality.

Id. at 526, 915 S.E.2d at 100 (quoting N.C. Gen. Stat. § 15A-1215(a) (2023) (emphasis added)). One of the two critical safeguards explicitly mentioned by the Supreme Court in *Chambers* was the fact that within the amended subsection 15A-1215(a) it states, “*in no event* shall more than twelve jurors participate in the jury’s deliberations.” *Id.* This explicit safeguard is consistent with *Bindyke* and its progeny which held that when an alternate juror is present with the full twelve panel of jurors during deliberations, creating a thirteen juror panel, it is structural error and the trial is void *per se*. *Bindyke*, 288 N.C. at 627, 220 S.E.2d at 534; *see also State v. Rowe*, 30 N.C. App. 115, 117, 226 S.E.2d 231, 232 (1976), *Godwin*, 95 N.C. App. at 569, 383 S.E.2d at 236, *Jernigan*, 118 N.C. App. at 246, 455 S.E.2d at 167.

The State contends that because the trial court gave the instruction to “restart, completely anew, your deliberations,” the alternate was not elected foreperson, and the time the alternate was present was “relatively short,” any possible prejudice was cured. This argument is misplaced.

Although the Supreme Court held that beginning deliberations anew allows the ultimate verdict to be “rendered by the constitutionally requisite jury of twelve,” it also recognized the statutory requirement that “in no event shall more than twelve jurors participate in the jury’s deliberations” is a “critical safeguard.” *Chambers*, 387 N.C. at 527, 915 S.E.2d at 100. Whether the alternate juror was elected foreperson or not, “anytime an alternate is in the jury room *during deliberations* he participates by his presence and, whether he says little or nothing, his presence will void the trial.” *Godwin*, 95 N.C. App. at 569, 383 S.E.2d at 236 (citation and quotation omitted). In *Chambers*, the original juror was in the jury room for deliberations for approximately twenty-two minutes before being excused. When deliberations resumed the following day with the alternate juror, the jury restarted deliberations and continued for three hours. This means the jury only deliberated without the alternate juror for approximately ten percent of the time, but at no time deliberated with thirteen jurors. *Chambers*, 387 N.C. at 522-23, 915 S.E.2d 97-98. In contrast, here, thirteen jurors were present for the first nineteen minutes of deliberation. The alternate juror was then released, and the jury resumed deliberations for an additional seventeen minutes before it reached a verdict. Thus, the jury in the case *sub judice* sat with

thirteen jurors for the majority of the time they spent deliberating.

Finally, although the trial court did instruct the jury to “restart, completely anew, your deliberations,” this instruction was followed by the direction, “[a]t this time . . . [g]o to the jury room and await further instructions, which may be *continue your deliberations* or begin deliberations.” This was not a clear and unequivocal mandate to completely re-start deliberations and cannot be seen as an effective “critical safeguard[] that ensure[s] that the twelve-juror threshold remains sacrosanct.” *Id.* at 526, 915 S.E.2d at 100. This is clear error, both constitutional and statutory. As this is both error *per se* and prejudicial error we must reverse and remand for a new trial.

Defendant makes a second argument on appeal concerning record level points. However, “[b]ecause we have ordered a new trial and as Defendant’s remaining argument is directed to an issue which may not occur on retrial, we decline to address it.” *State v. Little*, 296 N.C. App. 424, 434, 909 S.E.2d 363, 370 (2024).

III. Conclusion

Upon careful review, we conclude the trial court erred by allowing thirteen jurors to deliberate Defendant’s case in violation of both N.C. Gen. Stat. § 15A-1215(a) and N.C. Const. art. I, § 24. The trial court’s judgment is reversed, and this matter is remanded for new trial. It is so ordered.

REVERSED AND REMANDED.

Judges ZACHARY and GORE concur.