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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA26-106

Filed 21 October 2026

Guilford County, No. 24CR261824-400

STATE OF NORTH CAROLINA

v.

DESTINY NICOLE HANKINS

Appeal by defendant from judgment entered 9 May 2025 by Judge R. Stuart Albright in Guilford County Superior Court. Heard in the Court of Appeals 16 September 2026.

*Attorney General Jeff Jackson, by Special Deputy Attorney General Kathryne E. Hathcock, for the State.*

*The Law Office of Joseph E. Gerber, PLLC, by Joseph E. Gerber, for the defendant-appellant.*

TYSON, Judge.

Destiny Nicole Hankins (“Defendant”) appeals from a jury’s verdicts of guilty of felony death by vehicle and possession of drug paraphernalia. We discern no error.

**I. Background**

Marcus Nivens’ GMC Yukon vehicle ran out of gas around 2:00 p.m. on I-40

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West, near the I-73 ramp in Greensboro on 14 February 2024. Nivens called his girlfriend, Cora Sloan, to bring him some gasoline. Sloan and her brother, Albert Davis, brought Nivens three gallons of gasoline.

Sloan pulled her Crysler Sebring approximately ten to fifteen feet behind Nivens' vehicle and parked in the emergency lane. Nivens was wearing a green reflective vest. Nivens retrieved the gas canister from Sloan's Sebring vehicle and poured the fuel into his Yukon's fuel tank.

Nivens stood behind his Yukon with the rear hatch door open. "tak[ing] his gloves off" and "getting everything back together" before getting back into his Yukon and continuing his trip. Sloan testified her Sebring was struck by Defendant's Toyota Corolla, which struck Nivens and his Yukon. Sloan saw Nivens' body positioned over the guardrail and his Yukon vehicle was knocked twenty-five feet to thirty-five feet down the roadway. The front bumper of Nivens' vehicle was ripped off. Defendant's Corolla came to rest between Nivens' Yukon and Sloan's Sebring. Sloan called 911. Nivens was pronounced dead on the scene.

Matthew Reavis was driving on I-40 West and observed Nivens wearing a safety vest standing behind his Yukon when he was struck by the Corolla exiting from I-73 onto I-40. Reavis observed the Corolla "run off the left side of the road. The dust kicking up (sic) ... It caught [Nivens] and crushed him against the guardrail." Reavis pulled off the interstate and called 911.

Greensboro Police Officer Wade Crouse responded to the collision at 4:29 p.m.

Officer Crouse observed three vehicles on the right shoulder and Nivens' deceased body resting against the guardrail. Defendant was being treated by emergency personnel, told responders she did not know what had happened, and denied taking any drugs or being under the influence.

Defendant arrived *via* ambulance at the emergency department of Moses Cone Hospital at approximately 5:00 p.m. and was discharged at 11:11 p.m. Shortly before her discharge at 11:00 p.m., a urinalysis drug screen was collected, which revealed the presence of opiates, cocaine, benzodiazepines, and tetrahydrocannabinol ("THC").

Greensboro Police Officer James West responded to Moses Cone Hospital at approximately 5:00 p.m. Defendant was lying face-up in the bed, with a c-collar around her neck and a white blanket covering her from her neck down.

During his interactions with Defendant, Officer White observed "puncture marks going up and down [Defendant's] forearm, like little red bumps up and down" consistent with track marks. Defendant told Officer West she was traveling southbound on I-73 and was taking an exit to merge on I-40 West when "something happened" and a car swerved in front of her. Defendant also told Officer West she had never been issued a driver's license. Officer West administered the horizontal gaze nystagmus field sobriety test for depressants, inhalants, and dissociative anesthetics. The results showed Defendant exhibited all six clues of impairment. Defendant tested negative for alcohol consumption on a portable breathalyzer.

Defendant authorized Officer West to open her purse to look for her cellphone.

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Officer West saw several uncapped hypodermic needles located inside her purse. Defendant told Officer West the needles “were all old” but did not advise what the needles were used for.

Defendant was charged with driving while impaired and was informed of Nivens’ death. Officer West advised Defendant of her implied consent rights. Officer West asked whether Defendant would consent to a blood draw. She did not answer. Officer West called Defendant’s grandmother, her requested witness to the blood draw. Defendant did not allow medical staff to conduct the blood draw at 6:46 p.m. Defendant later submitted to the blood draw at 7:18 p.m.

The blood test revealed 8.4 nanograms of Delta-9 tetrahydrocannabinol and 8.5 nanograms of 11 hydroxy Delta-9 tetrahydrocannabinol per milliliter, which indicates a recent use of THC, the psychoactive component of marijuana. The blood test also revealed benzoylecgonine, a metabolite of cocaine, consistent with cocaine usage within the prior thirty-six to forty-eight hours; morphine, a metabolite of heroin; 48 nanograms per milliliter of fentanyl, consistent with tolerance to and use history; and, high levels of fentanyl metabolites.

Officer Crouse searched Defendant’s Corolla vehicle at the tow storage yard at 5:00 p.m. the next afternoon. In plain view in the center console he found a gas pipe he knew from his training and experience was used to smoke crack cocaine. Officer Crouse also noted Defendant was not wearing her seatbelt at the time of the accident. Officer Crouse obtained Defendant’s records from Moses Cone Hospital.

Defendant was originally charged with misdemeanor death by vehicle and driving while impaired but was later indicted for felony death by vehicle and possession of drug paraphernalia. Defendant was convicted of both offenses. The trial court consolidated both convictions for judgment. Defendant was sentenced as a prior record level I offender with 0 prior record level points to a presumptive range active sentence of 64 to 89 months. Defendant appeals.

## **II. Jurisdiction**

Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. §§ 7A-27(b) and 15A-1444(a) (2025).

## **III. Issues**

Defendant argues she received ineffective assistance of counsel (“IAC”) by her counsel failing to file a suppression motion to exclude the seized blood evidence.

## **IV. Standard of Review**

A defendant must satisfy the two-pronged test announced by the Supreme Court of the United States in *Strickland v. Washington* to show IAC. *Strickland v. Washington*, 466 U.S. 668, 80 L. Ed. 2d 674 (1984). The Court’s Strickland test for IAC has been adopted by the Supreme Court of North Carolina for state constitutional purposes. *State v. Braswell*, 312 N.C. 553, 324 S.E.2d 241 (1985).

To show a counsel’s purported deficient performance prejudiced her, a defendant “must show that h[er] counsel’s conduct fell below an objective standard of reasonableness.” *Id.* at 561-62, 324 S.E.2d at 248 (citing *Strickland*, 466 U.S. at 688,

80 L. Ed. 2d at 693.).

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction . . . resulted from a breakdown in the adversary process that renders the result unreliable.

*Strickland*, 466 U.S. at 687, 80 L. Ed. 2d at 693; *accord Braswell*, 312 N.C. at 561-62, 324 S.E.2d at 248.

Our Supreme Court stated it "ordinarily do[es] not consider it to be the function of an appellate court to second-guess counsel's tactical decisions[.]" *State v. Lowery*, 318 N.C. 54, 68, 347 S.E.2d 729, 739 (1986). "[T]his Court engages in a presumption that trial counsel's representation is within the boundaries of acceptable professional conduct" when reviewing an IAC claim. *State v. Roache*, 358 N.C. 243, 280, 595 S.E.2d 381, 406 (2004) (citation omitted).

## **V. Ineffective Assistance of Counsel**

Defendant argues she received IAC by her counsel failing to file a suppression motion to exclude the seized blood draw evidence. Defendant asserts her blood was unconstitutionally seized and the test results would have been excluded from evidence had her attorney filed a motion to suppress.

Defendant cannot meet either prong of *Strickland*. Defendant cites Officer Segarra's body camera footage, which she states records her initial refusal to submit to a blood draw at 6:46 p.m. The formal blood draw occurred at 7:18 p.m., approximately thirty-two minutes later. Officer West testified Defendant consented to the blood draw at 7:18 p.m. Defendant did not offer any evidence she had refused to provide a blood sample when the request was later made at 7:18 p.m.

Defendant's counsel's performance was not deficient. Presuming, without deciding, this failure to move to suppress was deficient performance, Defendant was not prejudiced. The unchallenged urinalysis results revealed the presence of opiates, cocaine, benzodiazepines, and THC. Defendant's argument is overruled.

## **VI. Conclusion**

Defendant's IAC claim fails on this record. Defendant received a fair trial, free from prejudicial errors she preserved and argued. There is no error in the jury's verdicts or the judgment entered thereon. *It is so ordered.*

NO ERROR.

Chief Judge DILLON and Judge ARROWOOD concur.

Report per Rule 30(e).