An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA26-183

Filed 21 October 2026

Durham County, No. 22CR000955-310

STATE OF NORTH CAROLINA

v.

AYINDE SAMORI ASANTE MELVIN

Appeal by defendant from judgment entered 23 May 2025 by Judge Cy A. Grant in Durham County Superior Court. Heard in the Court of Appeals 16 September 2026.

Attorney General Jeff Jackson, by Special Deputy Attorney General Marc Bernstein, for the State.

Cooley Law Office, by Craig M. Cooley, for defendant.

ARROWOOD, Judge.

Ayinde Samori Asante Melvin ("defendant") appeals following trial where the jury convicted him of first-degree murder under a felony murder theory. For the following reasons, we discern no error in the trial court's judgment.

I. Introduction

Vivienne Mitchell ("Vivienne") hosted a party on 10 June 2022 at her home on Miosha Street in Durham, attended by her five children: Michelle Knight ("Michelle"), Akilah Mitchell ("Akilah"), DeMonica, DeMarco Knight ("DeMarco"), and Nikia. The occasion was Michelle's 50th birthday. Michelle has two children: defendant and Briana Knight ("Briana"). The testimony at trial tended to establish the following series of events.

Briana lives in Oxford and was in a relationship with Kenneth Hawley ("Mr. Hawley"). After picking up a birthday cake, Briana picked up defendant at his home on Guess Road, along with defendant's girlfriend Kaylan Krcelic ("Ms. Krcelic") and their six-month-old baby. Defendant brought two guns with him: a Hellcat pistol and a custom firearm. He also carried an extended 30-round magazine.

After Briana arrived at Vivienne's home, Mr. Hawley began texting Briana asking for a ride, and she agreed. She drove to Oxford in her white Chevrolet Impala, along with defendant and Ms. Krcelic. Mr. Hawley got into the Impala with his bag, which contained cash, a small amount of marijuana, and his Smith and Wesson SD40 .40-caliber handgun. Briana testified that he sat in the passenger front seat, placing his gun either under the seat or in the center console, which he normally did. It took about 40 minutes to return to the party.

At Vivienne's house, only family was present, except for Kenny Wall, a friend of DeMarco. Mr. Hawley stayed in the car and smoked marijuana, not joining the

party. Later that evening, Briana returned to the Impala, and Mr. Hawley told her he was ready to leave. She said goodbye to her family.

With the Impala's two rear doors open, Mr. Hawley was sitting in the car's rear seat, "laid back" with his feet hanging out of the car on the driver's side, talking on the phone with his sister. Briana returned to the car, and testimony diverged as to whether she and Mr. Hawley were arguing. DeMarco was also outside, where Kenny Wall and Akilah were arguing. Akilah was angry with Mr. Hawley because he had asked Briana to drive him to the party but never left the car. She stood next to the car talking to Mr. Hawley and did not see a gun on his person.

Defendant walked to the back of the car, fired a shot into the air, and "told everyone to shut up and calm down." Akilah grabbed him, walked him a few feet away, and chastised him for bringing a gun to the family home. Briana and Mr. Hawley "hopped out the car" and asked defendant "what the fuck is wrong with him." Mr. Hawley asked, "Where are my kids?" After being out of the car for "a quick second," Hawley then "laid back in the position where he was" and Briana returned to the driver's seat. Akilah testified that Mr. Hawley "didn't even get a chance to stand up out of the damn car" before defendant "just turned around" and "shot him as soon as he opened the door and turned around to get out the car."

Briana then grabbed Mr. Hawley's .40-caliber pistol from the car, held it behind her back, and walked up to defendant. Defendant put his gun to her temple, and Vivienne pulled Briana away from him into the house. Akilah walked defendant

away, and he threw his gun to the ground. She then returned to check on Mr. Hawley, who told her, "[P]lease go in the house and tell my kids I love them and I'm gonna miss them." Mr. Hawley's sister testified that, while on the phone with her brother, she heard a first loud bang and asked Mr. Hawley what it was. After a second bang, Mr. Hawley told her, "They shot me," before the phone call disconnected.

Briana later turned the .40-caliber pistol over to Detective Sokal. Detective Sokal interviewed defendant on 15 June 2022, and he testified that defendant said he went to the party but was not there when Mr. Hawley was shot, and that defendant lied about how he got there, with whom, and where he went after leaving. Defendant surrendered a 9-mm Hellcat pistol.

Detective Sokal interviewed him again on 28 July 2022, and defendant admitted he had lied in his earlier interview. He described seeing the partygoers arguing around the Impala and admitted to firing a shot in the air as an attempt to calm everyone down. He admitted to shooting Mr. Hawley, claiming that it was self-defense, because he says he knew Mr. Hawley was armed, saw him reaching for something, and believed that Mr. Hawley was threatening his life. He also made a written statement, in which he says he shot Mr. Hawley after seeing him "reach." Defendant later testified to this version of events.

Detective Sokal attempted to get a search warrant for defendant's phone but defendant gave him an incorrect phone number. Defendant also denied posting any photographs of himself with guns on his social media account, but his Instagram page

briefly included a photograph, taken the night of Mr. Hawley's death and posted the following day, of defendant with two handguns. Detective Sokal interviewed seven other people, several of whom were at the scene, and none of the witnesses characterized defendant's behavior as self-defense.

The forensic investigation proceeded. A nearby residential surveillance camera recorded three gunshots at 11:42:32 p.m., 11:42:39 p.m., and 11:42:48 p.m., followed by a final shot over two minutes later. The State's forensic pathologist described gunshot wounds to Mr. Hawley's left arm and left torso, made by two or three projectiles and causing his death. Four spent cartridges were recovered from the site. 9-mm cases were found at the back of the Impala and on the Impala's driver's side; farther away, off the driver's side rear of the Impala, a 9-mm case and a .40-caliber case were found. The three 9-mm cases were all fired from the same weapon, but not the Hellcat 9-mm pistol that defendant surrendered. The .40-caliber case was fired from Mr. Hawley's pistol, which Briana briefly handled after defendant shot Mr. Hawley.

The State also presented evidence indicating defendant's involvement in a separate shooting, which occurred 22 April 2022 at a Walgreens in Durham. Ms. Krcelic's car had broken down, and Briana met her there to help. They eventually resolved the problem and, while driving away, they saw a man gesturing to them and Briana waved at him. After driving about two minutes to defendant's apartment, Ms. Krcelic went into his room, and defendant came out, said he would be back, and left

home. He returned, told Briana that something had happened at Walgreens, and she reported that she saw police, fire trucks, and EMS arriving at the pharmacy, where a shooting took place. Eyewitnesses and video footage showed that the suspect had driven a white Chevrolet Impala. A firearm case was found on site, and the State's forensic firearm expert concluded that this was fired from the same 9-mm Hellcat pistol that defendant later turned over to Detective Sokal.

At the close of the State's evidence, defendant moved to dismiss the first-degree murder charge for insufficient evidence, also arguing the State failed to prove beyond a reasonable doubt that defendant did not act in self-defense. The trial court denied the motion, and again denied the motion when defendant renewed it at the close of all evidence.

The jury found defendant guilty of first-degree murder under the felony murder rule with discharging a weapon into an occupied property as the predicate felony. The trial court sentenced defendant to life imprisonment without parole. Defendant gave notice of appeal in open court.

II. Discussion

Defendant first argues that the trial court should have granted his motion to dismiss due to insufficient evidence that he fired into the Impala. He next argues that the court erred in admitting evidence about the Walgreens shooting. We discuss each argument in turn.

A. The Court Properly Denied Defendant's Motion to Dismiss

We review *de novo* the trial court's decision to deny a motion to dismiss. *State v. Sanders*, 208 N.C. App. 142, 144 (2010) (citation omitted). We ask whether there was substantial evidence of each essential element of the offense charged and that defendant was the perpetrator of that offense. *Id.* at 144–45 (citing *State v. Scott*, 356 N.C. 591, 595 (2002)). "Substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' " *Id.* at 145 (quoting *State v. Smith*, 300 N.C. 71, 78–79 (1980)). We consider all admitted evidence in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor. *Id.* (citation omitted). If there is a conflict in the evidence, its resolution is for the jury to determine. *Id.* If the evidence merely raises suspicion or conjecture, the trial court must grant the motion to dismiss even if the evidence creates a strong suspicion. *State v. Powell*, 299 N.C. 95, 98 (2000) (citations omitted).

Under the felony murder rule, first-degree murder includes any killing "committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon[.]" N.C.G.S. § 14-17(a). It is a felony to discharge a weapon into an occupied property. N.C.G.S. § 14-34.1(a). The elements of this offense are "(1) willfully and wantonly discharging (2) a firearm (3) into property (4) while it is occupied." *State v. Dubose*, 208 N.C. App. 406, 409–10 (2010); *accord State v. Miles*, 223 N.C. App. 160, 162 (2012). If a defendant discharges a firearm into an occupied

vehicle and a murder occurs, this offence may validly underlie a first-degree murder charge under the felony murder theory. *State v. Wall*, 304 N.C. 609, 614 (1982).

Accordingly, the State was here required to present substantial evidence that defendant willfully or wantonly discharged his firearm into the Impala while he knew it was occupied by one or more people. Defendant contends that the State failed to present substantial evidence that he fired into the Impala or that Mr. Hawley was inside the Impala when he did so. We disagree.

Briana and Akilah both testified repeatedly that Briana and Mr. Hawley briefly exited the car after defendant's "warning" shot, but that they then sat back down and Mr. Hawley was inside the car at the precise moment that defendant shot him. Defendant claims that Akilah "clearly testified" that he "came out of the car," but we cannot overlook the context of this statement, which reads in full: "Kenny came out of the car and he was like, where are my kids? He didn't even get a chance to stand up out of the damn car. [Defendant] just turned around and just shoot him." Later, she testified that "[h]e didn't even stand up out the car. [Defendant] had shot him as soon as he opened the door and turned around to get out the car. That's when he shot him." At one point, the defense counsel asked a question beginning, "When Kenny got out of the car . . ." and Akilah immediately corrected him: "No, he never got out the car. He never stood up out the car. He was getting ready to get out the car. His feet was planted on the ground. He was fixing to stand up and get out of the

car." This testimony is consistent with Akilah's previous statements included in the record.

This testimony constitutes substantial evidence of Mr. Hawley's position inside the car at the moment in question and gives rise to more than mere suspicion or conjecture. Even had there been conflict in the evidence on the precise position of Mr. Hawley's body, this conflict was for the jury to resolve. Therefore, we conclude that the court properly denied the motion.

B. Admission of Evidence about the Walgreens Shooting was Proper

Rule 404(b) is a "general rule of inclusion of relevant evidence of other crimes, wrongs or acts by a defendant[.]" *State v. Coffey*, 326 N.C. 268, 278–79 (1990). However, evidence of the defendant's prior bad acts is not admissible "if its only probative value is to show that the defendant has the propensity or disposition to commit an offense of the nature of the crime charged." *Id.* Evidence that tends to prove that propensity may nevertheless be admitted so long as it is offered for another valid purpose, i.e. "as long as it is relevant to any fact or issue other than the defendant's propensity to commit the crime." *State v. White*, 340 N.C. 264, 284 (1995). Rule 404(b) evidence "should be carefully scrutinized in order to adequately safeguard against the improper introduction of character evidence against the accused." *State v. Al-Bayyinah*, 356 N.C. 150, 154 (2002).

Where a trial court rules that challenged evidence may be admitted pursuant to Rule 404(b), our standard of review is as follows. First, we ask whether the

evidence is relevant for some purpose other than to establish the defendant's propensity to engage in the conduct he is charged with. *Coffey,* 326 N.C. at 278. Second, whether that purpose is relevant to a material issue in the case. *State v. Anderson,* 350 N.C. 152, 175 (1999). Finally, whether the probative value of this evidence substantially outweighs the danger of unfair prejudice. *State v. Summers,* 177 N.C. App. 691, 697 (2006). As to the first two steps, "[w]e review *de novo* the legal conclusion that the evidence is, or is not, within the coverage of Rule 404(b)." *State v. Beckelheimer,* 366 N.C. 127, 130 (2012). As to the third step, we review the trial court's determination of the Rule 403 balancing test for abuse of discretion only. *Id.*

Rule 404(b) permits the admission of evidence of a defendant's other crimes, wrongs, or acts to prove a mental state such as malice. *State v. Jones*, 353 N.C. 159, 172–73 (2000) (citing *State v. Byers,* 105 N.C. App. 377, 383 (1992)). Malice is an element of both first- and second-degree murder, and may be established in at least three ways:

> (1) actual malice, meaning hatred, ill-will or spite; (2) an inherently dangerous act done so recklessly and wantonly as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief; or (3) that condition of mind which prompts a person to take the life of another intentionally without just cause, excuse, or justification.

State v. Smith, 269 N.C. App. 100, 102 (2019) (quoting *State v. Arrington*, 371 N.C. 518, 523 (2018) (quotation marks omitted)). "[M]alice, like intent, is a state of mind and as such is seldom proven with direct evidence. Rather, malice is ordinarily

proven by circumstantial evidence from which it may be inferred." *State v. Sexton*, 357 N.C. 235, 238 (2003). Therefore, the key question for this Court is whether the evidence about the Walgreens shooting was relevant to prove malice, the "limited purpose" for which the evidence was admitted.

Defendant argues that the events are too dissimilar and therefore bear no "logical relationship" to each other. Defendant cites *Al-Bayyinah* to contend that Rule 404(b)'s rule of inclusion is "constrained by the requirements of similarity and temporal proximity." *Al-Bayyinah*, 356 N.C. at 154. Accordingly, defendant argues that "[w]hile relevance is an important consideration," the trial court's focus must be on similarity and temporal proximity. Defendant contends that because the Walgreens shooting was "so factually dissimilar from [defendant]'s defensive shooting of [Mr. Hawley] . . . the court erred as a matter of law and abused its discretion" in admitting this evidence.

Furthermore, as to the court's Rule 403 balancing, defendant asserts that the earlier shooting "had no probative value" as to any issue in the case and that the unfair prejudice generated by "substantial evidence of a factually dissimilar" shooting substantially outweighed its "essentially non-existent" value. Last, defendant contends that if the trial court erred in admitting the evidence, it is reasonably probable that "at least one juror would've harbored reasonable doubt regarding the State's two first-degree murder theories - and acquitted him of both theories."

Defendant's reliance on *Al-Bayyinah* is misplaced. There, the Supreme Court of North Carolina held that Rule 404(b) evidence may be admitted if it constitutes "substantial evidence tending to support a reasonable finding by the jury that the defendant committed the *similar* act." *Al-Bayyinah*, 356 N.C. at 155 (emphasis in original). In *State v. Golden*, 224 N.C. App. 136 (2012), we understood this holding to require "similarity and temporal proximity" when the Rule 404(b) evidence is introduced to prove identity. *Golden*, 224 N.C. App. at 144. "[T]he admissibility of prior bad acts evidence under Rule 404(b) depends on the specific purpose for which the evidence is offered and the facts of each case." *Id.* at 143–44. (citing *State v. Carter,* 338 N.C. 569, 589 (1994) ("[T]he facts of each case will ultimately determine whether evidence of a defendant's former crime is pertinent in his prosecution for another independent crime.")).

"When, as in *Al-Bayyinah*, prior acts are admitted to establish identity or to show a common plan or scheme," the similarity of the events "is a critical factor in making the prior acts relevant to the purpose" of their introduction, because "[i]t is the similarity that shows identity and a common plan." *Id.*; *see also State v. Hembree*, 368 N.C. 2 (2015) (concluding that a defendant's dissimilarity argument was unavailing where the 404(b) evidence was probative of a common plan or scheme). By contrast, in *Golden*, evidence of prior acts was introduced "to provide a complete picture for the jury" as "part of a chain of events that place the crime in context." *Id.* at 143. Therefore, "under the circumstances . . . similarity is simply not pertinent to

the purpose for which the incidents were admitted." *Id.* at 144 (quotation marks removed).

In this case, the events were submitted only to show malice, because the identity of the person who shot Mr. Hawley is not in question. Dissimilarity between the charged offense and the Walgreens shooting is insufficient, standing alone, to preclude the conclusion that the evidence was probative on the question whether defendant had the condition of mind of malice when he shot Mr. Hawley.

We conclude that evidence of the Walgreens shooting was relevant to show that defendant shot Mr. Hawley with "that condition of mind which prompts a person to take the life of another intentionally without just cause, excuse, or justification[,]" *Smith*, 269 N.C. App. at 102, because it provided "circumstantial evidence from which [malice] may be inferred." *Sexton*, 357 N.C. at 238.

This evidence tended to show the following. When Ms. Krcelic and Briana arrived at defendant's apartment, Ms. Krcelic went into defendant's room. He then left and returned soon after, and he told Briana that something happened at the nearby Walgreens, where Briana saw "yellow tape and the EMS, fire trucks, police." While defendant was away from his apartment, a shooting occurred at the Walgreens, and according to the store's surveillance footage, the perpetrator shot from a white Impala, the car Briana owned. The Impala then sped out of the Walgreens parking lot, nearly hitting another vehicle. Further, the shell casing recovered at the Walgreens came from the Hellcat pistol that defendant turned over to police.

If believed by the jury, the State's evidence would constitute circumstantial evidence pointing directly at defendant as the perpetrator of the shooting. Moreover, it would constitute circumstantial evidence of malice. Indeed, a drive-by shooting in the parking lot of a pharmacy open to the public would be an "inherently dangerous act done so recklessly and wantonly as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief[,]" and this evidence illustrates a "condition of mind which prompts a person to take the life of another intentionally without just cause, excuse, or justification." *Smith*, 269 N.C. App. at 102 (quotes omitted). No evidence related to the Walgreens shooting established or even inferred that the shooting could have been justified by either self-defense or defense of others. Instead, the evidence supports the conclusion that defendant was someone capable of intentionally and maliciously shooting a firearm at another person. Accordingly, the evidence was highly relevant to the issue of malice.

The question whether to exclude evidence under Rule 403 is a matter "within the sound discretion of the trial court" and its decision "may be reversed for abuse of discretion only upon a showing that the ruling was so arbitrary that it could not have been the result of a reasoned decision." *State v. Collins*, 345 N.C. 170, 174 (1996). Where "the evidence [is] fundamental to proving that defendant acted with malice," it is "clearly highly probative." *State v. Lloyd*, 187 N.C. App. 174, 178 (2007). The "danger of unfair prejudice" can be "mitigated by the trial court's limiting instruction." *Id.*; *see also State v. Grice*, 131 N.C. App. 48, 54 (1998). As we have

established, the evidence was highly probative on the issue of malice, so the question is now whether the trial court abused its discretion in concluding that the risk of unfair prejudice did not substantially outweigh the evidence's probative value.

We conclude that the trial court did not abuse its discretion in admitting this evidence and acted appropriately in limiting any risk of unfair prejudice arising from the evidence's admission. The court repeatedly instructed the jury on the proper use of this evidence:

> Evidence is about to be received tending to show that the defendant shot an individual with a handgun on April 22 of 2022 in the area of a Walgreens store. This evidence is received solely for the purpose of showing that the defendant possesses malice, which is a necessary element of the crime in this case. If you believe this evidence, you may consider it, but only for the limited purpose for which it is received. You may not consider it for any other purpose.

This legally proper instruction clearly delineated the appropriate and narrow use of this evidence in jury deliberations.

Defendant's arguments on this question are unavailing. He claims that "this extensive evidence impacted the jury's malice determination, which in turn impacted their self-defense determinations and other determinations, such as determining [Mr. Hawley's] location when [defendant] shot him." This occurred, defendant claims, because jurors "used this malice-based proclivity determination to not only reject [defendant's] self-defense claim – but also to place [Mr. Hawley] inside that Impala

when [defendant] shot him, i.e., [defendant] had the proclivity or temperament to shoot someone sitting inside an occupied vehicle."

We disagree. Evidence tending to show that defendant had a malicious state of mind, such that he would shoot a firearm at someone unprovoked and without justification, would have no bearing whatsoever on the factual question whether Mr. Hawley was inside the vehicle. It is likewise not clearly probative on the question whether defendant would have shot Mr. Hawley had he stood up from the vehicle.

Accordingly, defendant fails to point us to prejudice arising from the admission of this evidence. Moreover, he has not shown that the court's subsequent jury instructions failed to limit the risk of unfair prejudice, such that this risk substantially outweighed the high probative value of the evidence. Therefore, he cannot meet his burden to establish that the court abused its discretion when conducting its Rule 403 balancing before its admission.

III. Conclusion

For the above reasons, we conclude that the court did not err in denying defendant's motions to dismiss and did not abuse its discretion in admitting evidence of the Walgreens shooting as probative of malice. Therefore, we discern no error in the trial court's judgment.

NO ERROR.

Chief Judge DILLON and Judge TYSON concur.

Report per Rule 30(e).