An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA25-978

Filed 4 November 2026

Iredell County, No. 23CR454818-480

STATE OF NORTH CAROLINA

v.

TERRENCE JAHIEM BAILEY

Appeal by Defendant from judgment entered 15 November 2024 by Judge Matthew Thomas Houston in Iredell County Superior Court. Heard in the Court of Appeals 29 September 2026.

Attorney General Jeff Jackson, by Assistant Attorney General Sonam K. Shah, for the State-Appellee.

Anne Bleyman for Defendant-Appellant.

COLLINS, Judge.

Defendant Terrence Jahiem Bailey appeals from a judgment entered upon a jury's guilty verdict of possession of a firearm by a felon. Defendant argues that the trial court erred by refusing to instruct the jury on the defense of justification and that N.C. Gen. Stat. § 14-415.1, criminalizing possession of a firearm by a felon, violates his constitutional rights under the United States and North Carolina

Constitutions. We find no error in the trial court's instructional decision and dismiss Defendant's constitutional challenge.

I. Background

On 7 February 2024, Defendant was indicted for possession of a firearm by a felon. The State's evidence at trial tended to show the following:

On 11 April 2023, Defendant plead guilty to multiple felony offenses, including breaking and entering, larceny after breaking and entering, and larceny of a firearm. Defendant's sentence was suspended, and he was placed on supervised probation for eighteen months. Defendant remained on supervised probation on 8 November 2023. On that date, Defendant's sister, Courtney Bailey, returned to the residence she had previously shared with Defendant and their mother, Markesha Daniels, to retrieve personal belongings. Courtney arrived accompanied by De'Nya Harriston and Shannon Harriston.

While Courtney was gathering her belongings, an argument occurred between Courtney and her mother. Courtney did not threaten or strike her mother. De'Nya did not see Courtney threaten or assault her mother.

As Courtney prepared to leave, Defendant emerged from the residence and threatened Courtney. Courtney testified that Defendant stated he would "beat [her] ass" and kill her. De'Nya similarly testified that Defendant told Courtney he would beat her ass and that she should leave before he shot them. Shannon testified that

Defendant threatened Courtney and stated that, if she did not leave, he would shoot her.

Courtney, De'Nya, and Shannon each testified that Defendant possessed a tan and black handgun. They further testified that Defendant fired three shots as they were leaving the property. Law enforcement officers later recovered three shell casings from the property.

When officers first arrived, Defendant denied any shots had been fired. Defendant later admitted possessing a firearm and led officers to a drawstring bag hidden in nearby woods. Inside the bag, officers found a handgun along with Defendant's identification and personal belongings. Defendant acknowledged he had discarded the firearm because he knew he was a felon and was on probation.

Defendant's sole witness was his girlfriend, Robin Hirsch-Jackson. She testified that she saw Courtney and De'Nya physically assaulting Markesha before coming outside and later heard one of the departing women yell, "[W]e got shooters. We'll be back."

At the charge conference, Defendant requested an instruction on justification. The trial court denied the request, concluding the evidence did not support the instruction.

The jury found defendant guilty of possession of a firearm by a felon. Defendant timely appealed.

II. Discussion

A. Justification Instruction

Defendant argues that the trial court erred by refusing to instruct the jury on the defense of justification.

Whether the evidence supports a requested jury instruction is reviewed de novo. *State v. Mercer*, 373 N.C. 459, 462 (2020). A defendant charged with possession of a firearm by a felon is entitled to a justification instruction only when the evidence, viewed in the light most favorable to the defendant, supports each element of the defense. *Id.* at 464.

In *Mercer*, our Supreme Court recognized "that in narrow and extraordinary circumstances," justification may be a defense to possession of a firearm by a felon. *Id.* at 463. To warrant the instruction, a defendant must present evidence tending to show: (1) he "was under unlawful and present, imminent, and impending threat of death or serious bodily injury"; (2) he "did not negligently or recklessly place himself" in the situation; (3) he "had no reasonable legal alternative to violating the law"; and (4) "there was a direct causal relationship between the criminal action and the avoidance of the threatened harm." *Id.* at 464 (citation omitted).

Viewing the evidence in the light most favorable to Defendant, we conclude the evidence failed to satisfy multiple *Mercer* factors.

First, Defendant presented insufficient evidence of an imminent threat of death or serious bodily injury at the time he possessed the firearm. Although Robin

testified Courtney and De'Nya physically assaulted Markesha, no evidence indicated either woman was armed or posed a threat of death or serious bodily injury. Moreover, the evidence established that Defendant emerged from the residence armed, threatened Courtney, and fired three shots as Courtney and her companions were departing. Even accepting Robin's testimony as true, the evidence does not demonstrate Defendant possessed the firearm because he faced an imminent threat of death or serious bodily injury.

Second, Defendant presented no evidence that he lacked a reasonable legal alternative to violating the law. The evidence revealed several alternatives: Defendant could have remained inside the residence, contacted law enforcement, or otherwise avoided possessing a firearm.

Third, Defendant failed to show a direct causal relationship between possessing the firearm and avoiding threatened harm. The evidence showed Defendant possessed the firearm, threatened Courtney, fired shots, and then concealed the weapon in nearby woods. No evidence connected Defendant's possession of the firearm to the prevention of specific threatened harm.

This case is readily distinguishable from *Mercer*, where armed assailants fired shots at the defendant's residence and the evidence showed the defendant's possession of the firearm was temporary and directly responsive to an ongoing armed attack. *Id.* at 465-66.

Here, Defendant failed to offer evidence supporting each element of the justification defense. Because the evidence did not support a justification instruction, the trial court did not err by declining to give one.

B. Constitutional Challenge

Defendant next argues that N.C. Gen. Stat. § 14-415.1 is unconstitutional under the United States Constitution and the North Carolina Constitution. We do not reach the merits of these arguments.

"In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context." N.C. R. App. P. 10(a)(1). It is well settled that constitutional issues "not raised and passed upon at trial will not be reviewed for the first time on appeal." *State v. Scott*, 300 N.C. App. 476, 489 (2025) (quotation marks and citation omitted).

Defendant concedes that that record contains no constitutional challenge to section 14-415.1. Defendant moved to dismiss the charge based on the sufficiency of the evidence but never argued the statute was facially unconstitutional or unconstitutional as applied to him. Nor did the trial court rule upon any constitutional argument.

Defendant asks this Court to invoke Rule 2 to suspend the Rules of Appellate Procedure and review the issue notwithstanding the preservation defect. We decline

to do so. Our appellate courts have repeatedly refused to invoke Rule 2 to reach similar unpreserved constitutional challenges to section 14-415.1. *See id.* at 489; *State v. Vaughn*, 301 N.C. App. 634, 646-47 (2025).

Because Defendant failed to preserve his constitutional arguments for appellate review, and we decline to invoke Rule 2, those arguments are dismissed.

III. Conclusion

The trial court therefore properly denied Defendant's request for a jury instruction on justification. Defendant's constitutional challenge to N.C. Gen. Stat. § 14-415.1 was not preserved for appellate review and is dismissed.

NO ERROR IN PART; DISMISSED IN PART.

Judges CARPENTER and FLOOD concur.

Report per Rule 30(e).