An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA26-153

Filed 4 November 2026

Wilson County, Nos. 18CR050149-970; 18CR050150-970

STATE OF NORTH CAROLINA

v.

KEYSHANE MONTEL SANDERS

Appeal by Defendant from order entered 16 May 2025 by Judge Craig Croom in Wilson County Superior Court. Heard in the Court of Appeals 13 October 2026.

Attorney General Jeff Jackson, by Special Deputy Attorney General Asa C. Edwards, IV, for the State-Appellee.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Wyatt Orsbon, for Defendant-Appellant.

COLLINS, Judge.

Defendant appeals from an order entered following a retrospective competency hearing conducted pursuant to this Court's remand in *State v. Sanders*, 291 N.C. App. 403, 2023 N.C. App. LEXIS 730 (2023) (unpublished). In that prior appeal, this Court concluded that substantial evidence existed to raise a bona fide doubt regarding Defendant's competency to stand trial in March 2022 and remanded for a hearing to

determine Defendant's competency at the time of trial.

Following remand, the trial court determined Defendant was competent at the time of trial. Defendant now argues that: (1) the trial court lacked subject-matter jurisdiction because the State failed to properly reinstitute proceedings following restoration of competency; (2) the trial court applied an incorrect legal standard in determining competency; and (3) the trial court improperly placed the burden of proof upon Defendant. We find no error.

I. Background

In February 2018, a forensic evaluator concluded Defendant lacked capacity to proceed due to serious mental illness. In July 2018, psychologist Stephanie Callaway, Psy.D., likewise determined Defendant lacked competency and described him as acutely psychotic.

By order entered 31 August 2018, the trial court found Defendant incapable of proceeding and involuntarily committed him to Cherry Hospital. By order signed 10 December 2018, the court further ordered the case "dismissed with leave until the Defendant re-gains the capacity to proceed to trial." (capitalization altered).

After treatment and restoration services, Joshua Pagano, D.O., evaluated Defendant on 12 April 2019 and concluded Defendant's competency had been restored. Dr. Pagano determined Defendant understood the charges against him, appreciated the seriousness of the proceedings, understood the roles of courtroom participants, and was capable of assisting counsel.

The State filed a "Notification of Change in Status for Defendant Previously Found Incapable to Proceed and Involuntarily Committed to A State Mental Health Facility" on 29 April 2019. The filing advised the court that Defendant had regained competency, treating clinicians at Cherry Hospital recommend that his involuntary commitment be discontinued, and a hearing to discharge the Defendant from Cherry Hill to the Wilson County Sheriff's custody was scheduled in the Wayne County Court.

Defendant was thereafter evaluated by James Hilkey, Ph.D., who reported there was "no reason to doubt" Defendant's ability to proceed, and by R.L. Etheridge, Ph.D., who concluded Defendant demonstrated legal competency.

Defendant's trial commenced on 21 March 2022. The jury convicted him of first-degree forcible sexual offense, attempted first-degree murder, robbery with a dangerous weapon, and assault with a deadly weapon with intent to kill inflicting serious injury.

Defendant appealed to this Court. This Court held that substantial evidence raised a bona fide doubt regarding competency and remanded for a retrospective competency hearing pursuant to *State v. McRae*, 139 N.C. App. 387 (2000). *Sanders*, 2023 N.C. App. LEXIS 730 at *9.

Following an evidentiary hearing on 13 December 2024 and by written order entered 16 May 2025, the trial court concluded that Defendant was competent at the time of trial. Defendant appealed.

II. Discussion

A. Subject-Matter Jurisdiction

Defendant first contends the trial court lacked subject-matter jurisdiction because the State failed to properly reinstitute proceedings under N.C. Gen. Stat. § 15A-1008(c) after Defendant regained competency.

Whether a trial court possesses subject-matter jurisdiction is a question of law reviewed de novo. *State v. Bryant*, 267 N.C. App. 575, 577 (2019).

The applicable version of section 15A-1008[1] governing dismissal of charges when a defendant lacks capacity to proceed provides:

> (a) When a defendant lacks capacity to proceed, the court shall dismiss the charges upon the earliest of the following occurrences:
>
> > (1) When it appears to the satisfaction of the court that the defendant will not gain capacity to proceed.
> >
> > . . . .
> >
> > (3) Upon the expiration of a period of five years from the date of determination of incapacity to proceed in the case of misdemeanor charges and a period of 10 years in the case of felony charges.

N.C. Gen. Stat. § 15A-1008(a) (2022). Dismissal pursuant to subsections (a)(1) and (a)(3) is "without prejudice to the refiling of the charges." *Id.* § 15A-1008(c) (2022). "Upon the defendant becoming capable of proceeding, the prosecutor may reinstitute

[1] The applicable version of the statute was in effect from 1 December 2013 through 30 November 2025, *see* 2013 N.C. Sess. Laws 18, § 11, thus encompassing the time of indictment (13 August 2018), dismissal (10 December 2018), and trial (21 March 2022) in this case.

proceedings dismissed pursuant to [subsections (a)(1) and (a)(3)] by filing written notice with the clerk, with the defendant, and with the defendant's attorney of record."[2] *Id.*

Defendant argues this since-deleted provision required the State either to file a formal notice specifically reinstating the criminal charges or to obtain new indictments. According to Defendant, because neither occurred, the prosecution remained terminated and the trial court lacked jurisdiction. We disagree.

Subsection (a)(3) requires written notice but does not prescribe a particular form, title, or wording for that notice. Nor does it require the prosecutor to obtain new indictments upon restoration of competency. Had the General Assembly intended to impose such requirements, it would have done so. We decline to read additional procedural requirements into the statute beyond those expressly enacted.

Here, after Dr. Pagano determined Defendant's competency had been restored, the State filed a written notice notifying the court that Defendant had regained competency and requesting his return to Wilson County custody. The filing informed the court and the parties that Defendant was now capable of proceeding and that the criminal matter was moving forward. At no time did Defendant question that the prosecutor "reinstitute[d] proceedings." *Id.* Assuming arguendo that section 15A-1008(c) requires affirmative action to reinstitute proceedings, the State's written

[2] This notice provision of section 15A-1008(c) was deleted by S.L. 2025-93, § 7(b).

notice substantially complied with that requirement. The purpose of the now-deleted provision was to provide notice that the prosecution was resuming following restoration of competency. The State's written notice served that purpose.

Defendant's reliance upon *State v. Austin*, 31 N.C. App. 20 (1976), and *State v. McKoy*, No. COA13-1071 (N.C. Ct. App. June 17, 2014) (unpublished), is misplaced for a myriad of reasons and those cases do not alter our analysis.

For all these reasons, we conclude the trial court possessed subject-matter jurisdiction.

B. Competency Standard

Defendant next argues that the trial court misapplied the competency standard set forth in section 15A-1001(a). We disagree.

Whether a trial court applied the correct legal standard is a question of law reviewed de novo. *State v. Rhodes*, 366 N.C. 532, 536 (2013). "The court's findings of fact as to defendant's mental capacity are conclusive on appeal if supported by the evidence." *State v. Baker*, 312 N.C. 34, 43 (1984).

Section 15A-1001(a) provides:

> No person may be tried, convicted, sentenced, or punished for a crime when by reason of mental illness or defect he is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner.

N.C. Gen. Stat. § 15A-1001(a) (2022).

Here, the trial court found the following:

> 9. The Court made inquiry of Defendant's understanding at trial. His response was "I don't really know what's going on. My mind is really messed up right now, man, and I don't even know." He identified his lawyer. He stated his lawyer was supposed to help him and fight for him. He could not identify the prosecutor and his role. He could identify the judge and the judge "tell people what to do I guess." The Court inquired of defense counsel of Defendant's "ability to proceed in this case and assist in his, that he understands and comprehends and that he's able to assist in his defense." Defense counsel responded, "he has the ability to assist in his defense, your Honor."
>
> 10. In the 4/12/2019 evaluation, Dr. Pagano noted "'lack of effort and suspicion of feigning deficits'" requiring Dr. Nelson give Defendant the Test of Memory Malingering (TOMM), Inventory of Legal Knowledge (ILK), and Miller Forensic Assessment of Symptoms Test (M-FAST). Defendant scored two to three times higher than the cut-off score which indicates an intentional exaggeration of symptoms to the point of implausibility. Furthermore, Defendant "'is almost certainly feigning problems in three major areas: Neuropsychological memory functioning, legal knowledge, and extreme psychiatric illness.'"
>
> 11. In a November 10, 2019 evaluation, Dr. Hilkey also noted that Defendant suffers from mental illnesses and intellectual deficits. However, Defendant "is prone to exaggerate his symptoms and is quite invested in being viewed as mentally ill and not responsible for his actions."
>
> 12. Defendant has been adamant with his attorneys regarding insanity. Two psychologists, Dr. James Hilkey November 10, 2019 report and Dr. R.L. Etheridge February 2, 2022 report, stated he was not insane and also capable of proceeding.
>
> 13. Defendant has become angry with his defense counsel because his attorney is ethically prevented from going

> forward on an insanity defense based on evaluations from Dr. Hilkey and Dr. Etheridge.
>
> 14. Defendant was adamant about his discovery prior to the commencement of this trial. Defense counsel discussed and read discovery to the Defendant prior to trial.
>
> 15. The Court discussed whether Defendant would testify. Defendant chose not to testify.
>
> 16. Defendant wrote a letter to the court that was read into record describing his case as "open and close case." Defendant further stated his concerns about jurors being dismissed and only four black people being called to the jury box.
>
> 17. Nothing during the trial changed defense counsel's opinion regarding Defendant's ability to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner.
>
> 18. Defendant took notes during the trial to assist his attorney. Defendant communicated with his attorney during the trial.
>
> 19. Defendant voiced concerns to the Court and communicated with his attorney during this trial because he understood the seriousness of his charges and possible consequences.

These findings are both unchallenged and supported by competent evidence. They are thus binding on appeal.

The trial court then correctly recited the correct legal standard in the order's first legal conclusion as follows:

> The test for capacity to proceed is whether Defendant "by reason of mental illness or defect is unable to understand

> the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner." N.C. Gen. Stat. § 15A-1001(a).

Based upon its findings of fact, the trial court then concluded, "Defendant was able to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, *or* to assist in his defense in a rational or reasonable manner." (emphasis added).

Defendant argues use of the word "or" reflects application of an impermissibly disjunctive competency standard. This argument is unpersuasive when the order is read as a whole.

The challenged word arose only after the trial court reformulated the statutory standard in affirmative terms. In doing so, the trial court retained the statute's disjunctive wording even though it had converted the definition of incapacity ("unable") into a finding of capacity ("able"). Nothing in the order suggests the trial court believed Defendant could be deemed competent upon satisfying only one of the statutory factors. To the contrary, the trial court's findings address all three factors, and the trial court ultimately concluded that Defendant "was not mentally incapacitated and was capable of proceeding as defined in N.C.G.S. § 15A-1001(a)." The order therefore reflects application of the statutory standard itself.

Viewed in context, the trial court's retention of the word "or" while converting the statutory definition of incapacity into an affirmative finding of capacity

constitutes nothing more than a linguistic carryover from the statutory language. Because the order demonstrates the court understood and applied the proper legal standard, we find no error.

C. Burden of Proof

Defendant finally argues the trial court improperly placed the burden upon him to demonstrate he lacked competency at the time of trial.

The allocation of the burden of proof presents a question of law reviewed de novo. *N.C. HHS v. Peace*, 292 N.C. App. 41, 47 (2024).

Our court has held that "[i]t is defendant's burden of proof to show that he lacked the capacity to proceed." *McRae*, 163 N.C. App. at 367-68; *see also Baker*, 312 N.C. at 43. Acknowledging this, Defendant nevertheless argues that because this Court previously determined the trial court should have conducted a competency hearing, the burden should have shifted to the State at the retrospective proceeding. We disagree.

In Defendant's first appeal, this Court did not determine Defendant was incompetent. Rather, we concluded only that substantial evidence created a bona fide doubt regarding Defendant's competency such that a hearing was required. *Sanders*, 2023 N.C. App. LEXIS 730 at *9. The purpose of the remand was to determine whether Defendant was, in fact, competent at the time of trial.

A retrospective competency hearing remains a competency hearing. Nothing in our prior opinion in this case altered the burden recognized in *McRae*, nor could it

have. *McRae* itself arose in the context of a retrospective competency proceeding and expressly assigned the burden to the defendant. *McRae*, 163 N.C. App. at 367-68. We are bound by that precedent.

Moreover, the United States Supreme Court has held that placing the burden of proving incompetency upon a defendant does not offend due process. *Medina v. Californi*a, 505 U.S. 437, 449-53 (1992).

Accordingly, the trial court did not err in assigning Defendant the burden of proving he lacked competency to proceed.

III. Conclusion

The State substantially complied with N.C. Gen. Stat. § 15A-1008(c), and the trial court therefore possessed subject-matter jurisdiction. The trial court's retrospective competency order demonstrates that it understood and applied the proper legal standard under N.C. Gen. Stat. § 15A-1001(a), notwithstanding its inadvertent retention of statutory disjunctive wording when restating its ultimate finding. Finally, the trial court properly assigned Defendant the burden of proving incapacity under controlling precedent.

NO ERROR.

Chief Judge DILLON and Judge FREEMAN concur.

Report per Rule 30(e).