IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-800

Filed 18 November 2026

Mecklenburg County, Nos. 10CR224332-590, 10CR224334-590

STATE OF NORTH CAROLINA

v.

DEREK WARD

Appeal by Defendant from Judgments entered 28 August 2024 by Judge Carla N. Archie in Mecklenburg County Superior Court. Heard in the Court of Appeals 19 May 2026.

*Attorney General Jeff Jackson, by Special Deputy Attorney General Keith T. Clayton, for the State.*

*Massengale & Ozer, by Marilyn G. Ozer; and Appellate Defender Glenn Gerding, by Assistant Appellate Defender Wyatt B. Orsbon, for Defendant-Appellant.*

HAMPSON, Judge.

## Factual and Procedural Background

Derek Ward (Defendant) appeals from Judgments entered pursuant to jury verdicts finding him guilty of First-Degree Murder and First-Degree Rape. The Record before us, including evidence presented at trial, tends to reflect the following:

On 7 June 2010, Defendant was indicted for the First-Degree Murder and First-Degree Rape of his cousin Brittani Ward. For the next ten years, Defendant was

found incapable of standing trial due to severe mental illness based on evaluations by forensic psychiatrists at the North Carolina Department of Health and Human Services (DHHS).

A December 2021 report by DHHS psychiatrist Dr. Nicole Wolfe opined Defendant could stand trial (the 2021 Evaluation). The 2021 Evaluation noted Defendant was "not fully cooperative" with the evaluation but stated his "lack of cooperation appears volitional and not the product of a mental illness or defect." Thus, Dr. Wolfe gave her opinion that Defendant "currently lacks symptoms of a severe mental disease or defect that prevent him from being capable of proceeding to trial."

A competency hearing was held on 5 June 2023. The trial court reviewed Dr. Wolfe's 2021 Evaluation. Defense counsel submitted an evaluation prepared in December 2022 by Dr. George Corvin, a psychiatric expert, which opined Defendant remained incapable of proceeding to trial.[1] Dr. Corvin also testified to this opinion at the hearing.

Defendant asked to address the trial court. He denied he was incompetent and suggested DNA evidence would prove he did not commit the charged crimes. The trial court conducted a colloquy with Defendant, asking, for instance, about his ability to work with his appointed attorney, Michael Kabakoff, to prepare for trial. Defendant

[1] Dr. Corvin's report was based solely on a review of Defendant's medical records and prior psychiatric evaluations, as Defendant had refused Dr. Corvin's attempt to interview him in July 2021. However, Dr. Corvin testified he had a "very brief contact" with Defendant on 1 June 2023, the week before the hearing.

responded, "I'm pretty sure I can work with" Kabakoff.

After hearing the parties' arguments and reviewing the evidence, the trial court noted it was evaluating "conflicting medical opinions" from Dr. Wolfe and Dr. Corvin. The trial court then ruled:

> [Trial Court]: I am charged, as the trier of facts in this hearing, to assess credibility and weight. And in this particular case, I have concerns about the credibility and weight that I would give to [the 2021 Evaluation's] opinion, given prior opinions. But I also have issues of weight to be given to Dr. Corvin's opinion, because his interactions with [Defendant] were so limited.
>
> And I realize that the complexity of this case and the challenges related to these opinions are, in some respects, related to a lack of cooperation on the part of [Defendant]. It seems highly reasonable in having been shuttled between facilities, and doctors, and medications, that any defendant would be suspicious, and to some degree uncooperative.
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> But as a matter of legal analysis, I am persuaded that [Defendant] suffers from something, but it doesn't rise to the level of an incapacity to proceed to trial. He understands the process. He understands his role in the process, and he has an ability to assist in his defense. And while capacity is fluid, he has made an extraordinary presentation to the Court today that belies these doctors' opinions. So I am going to find him capable of proceeding to trial.

On 2 May 2024, the trial court held a hearing on Defendant's motion to "remove [his attorney] as counsel and that he be permitted to represent himself." The trial court asked Defendant to explain this request. Defendant stated, "it really is my right to represent myself if I want to." The trial court asked Defendant if he understood the charges and the maximum punishment of life imprisonment without parole for First-

Degree Murder; Defendant confirmed he did. Defendant stated he understood his rights to a court-appointed attorney, to hire an attorney if he could afford one, and to represent himself. He also confirmed he understood he would "have to be responsible for understanding the law and the procedure applicable to [his] trial" if he chose to represent himself. The trial court granted Defendant's request to terminate counsel and proceed pro se. On its own motion and over Defendant's objection, the trial court appointed Kabakoff as Defendant's standby counsel.[2]

An eight-day jury trial began on 19 August 2024. During a pretrial hearing, the trial court confirmed with Defendant that he still wanted to represent himself.

Kabakoff, acting as standby counsel, stated, "I continue to have concerns about [Defendant's] capacity to proceed." Defendant disagreed, stating, "I'm more than coherent" and "I don't think we should have any . . . further disturbances about mental health or my capacity to proceed." On its own initiative, the trial court questioned Defendant about his capacity. The trial court verified the following information with Defendant: he knew the date, he knew where he was, he knew the crimes he was charged with and the allegations underlying the charges, he was not taking any medications, he was not hearing voices, he understood the roles of the prosecutor and the jury at the trial, and he understood the potential punishments if

[2] At the 2 May 2024 hearing, Kabakoff shared that he had "continued concerns about [Defendant's] competency." The trial court stated, "Well, for the record, based on our exchange today, the Court has no concerns about [Defendant's] capacity to proceed."

he were found guilty. Asked what he was "going to do in representing" himself, Defendant answered, "I myself am reasonably prepared. I will present evidence and I'm going to defend myself the best way possible from the facts of everything that I have presented to me." After this colloquy, the trial court found Defendant was "fully aware of the charges against him, the nature of those charges, his position relative to those charges," and ruled Defendant was "capable of proceeding to trial."

On the second day of trial, Kabakoff again raised capacity concerns, stating he believed Defendant was "under the effects of his profound mental illness[.]" Kabakoff informed the trial court Defendant had passed him notes the previous day with messages claiming one juror "was a member of the Illuminati" and "another juror was, as he put it, an ancient space king." According to Kabakoff, Defendant then "crum[p]le[d] [the notes] up and put [them] in his breast pocket[.]"

Kabakoff also provided the trial court and Defendant with notes summarizing his recent conversations with Defendant during pretrial jail visits in July and August 2024, which the trial court reviewed *in camera*.[3] Kabakoff indicated the notes contained illustrative examples of Defendant's behavior relevant to the question of his capacity to proceed with the trial.[4]

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[3] Kabakoff's jail visit notes are not in the Record on Appeal.

[4] Kabakoff also pointed out that under the statute governing the role of standby counsel, he could not file a motion for a forensic evaluation. However, Kabakoff noted that "upon becoming aware of the competency issues, [the trial court] has the ability to act sua spontae [sic] and that's what I'm asking the Court to do."

The trial court conducted another colloquy with Defendant about his capacity. Defendant denied both passing notes to Kabakoff the previous day and the other conduct Kabakoff suggested showed he lacked capacity. Defendant further shared that since deciding to represent himself, he had discussed a range of pertinent legal topics with Kabakoff, such as preparing a defense theory and responding to the State's evidence.

After this colloquy and a review of the materials submitted by Kabakoff, the trial court observed Kabakoff's notes from his pretrial conversations with Defendant were "replete with references to trial strategy, theories of the case, a review of photographs and DNA analysis, the possibility of subpoenaing witnesses, [and] the preparation of examination questions." Kabakoff had also "counseled [Defendant] repeatedly on the risks of representing himself."

The trial court then ruled:

> [Trial Court]: Based on my review of these records, and my further colloquy with [Defendant] in open court, I again find that he is aware of the charges against him, his circumstances relative to those charges, and that he is capable, although he is making choices that appear to be ill-advised, they seem to be knowing, intelligent and informed decisions.

During its case-in-chief, the State presented evidence showing Defendant moved into the Charlotte home of his cousin Brittani Ward's family in late April or early May 2010. Brittani was twenty-three years old at the time. She lived in an apartment with her mother Dawn and her younger sisters Carlie, Fallon, and Kyia

(collectively, the Family Members).

Soon after he moved in, Defendant told the Family Members—who believed in spirits and demonic possession—that Brittani was possessed by a demon and "[h]e was there to take care of it." A few days before Brittani died, Carlie witnessed Defendant choke Brittani on her bed by squeezing her throat three times. Defendant said he did this to get "the demon to leave his cousin." Fallon, who was also present for this choking incident, testified Defendant told her to "[h]old [Brittani's] nose" to help "get this demon out", which she did. Fallon felt "[s]cared", as she "thought [Defendant] was going to do the same thing to [her] next."

On 5 May 2010, Brittani's sisters went to school in the morning. Dawn left the apartment around 11 a.m. Defendant then was alone in the apartment with Brittani for several hours.

When Carlie got home from school around 2:20 p.m., Defendant was sitting on the sofa watching TV. He said Brittani was sleeping. Brittani's bedroom door was closed. Carlie "peek[ed]" in the bedroom, saw Brittani on her bed, and thought she was asleep. According to Carlie, it was not unusual for Brittani to sleep during the day because her medication often kept her up at night.

Dawn returned to the apartment a few hours later. She checked on Brittani in her bed. Brittani was "purple", "cold", and had blood coming out of her vaginal area. Defendant told the Family Members that "the demon was ahold of Brittani right now" and "advised" them not to call 911. Instead, he instructed them to "wash" Brittani "to

bring her back." Using warm water and towels, the Family Members washed and "wiped [Brittani] down." When she did not revive, Dawn phoned elders from her congregation to request help. The elders arrived and realized Brittani needed medical attention. Dawn called 911. Paramedics pronounced Brittani dead at the scene.

On 25 May 2010, Defendant was arrested for Brittani's murder. On Defendant's cell phone, officers of the Charlotte-Mecklenburg Police Department (CMPD) found a photo of Brittani's body "lying . . . on the floor with her eyes closed[.]" The photo bore a timestamp of 12:27 p.m. on 5 May 2010—the day Brittani died.

The State called Dr. Thomas Owens, the Chief Medical Examiner for Mecklenburg County, who performed an autopsy of Brittani on 6 May 2010. The trial court accepted Dr. Owens as an expert in forensic pathology.

Dr. Owens testified the cause of Brittani's death was "strangulation due to pressure placed around her neck[.]" The autopsy also showed vaginal injuries consistent with "forceful penetration where the person was resisting the activity"; Dr. Owens opined these injuries occurred "6 to 12 hours" before Brittani died. Moreover, according to Dr. Owens, 12:27 p.m. on 5 May 2010 was "within [the] timeframe" of the estimated time of death.

A sexual assault examination was conducted as part of the autopsy. The evidence collected in the resulting sexual assault kit included vaginal swabs and pubic hair combings.

On the sixth day of trial, Defendant requested that standby counsel, Kabakoff,

take over as "active counsel for the remainder of the trial." The trial court granted this request after confirming Defendant understood he could not later change his mind and resume representing himself. After assuming the lead counsel role, Kabakoff informed the trial court Defendant had rejected his recommendation to move for a mistrial or for a continuance. Kabakoff stated he and Defendant were "definitely at a situation where [Defendant is] saying I understand what you're saying, [and] I don't want to" make either motion.

The State's final witness was Aby Moeykens, a CMPD crime lab employee. The trial court accepted Moeykens as an expert in forensic DNA analysis.

Moeykens testified that in May 2010, she had tested the vaginal swabs in the sexual assault kit, which indicated "there was semen on the vaginal swabs but no sperm cells detected." DNA tests performed by an outside Labcorp laboratory concluded Defendant "was excluded as a contributor to the [DNA] profile that was obtained" from the vaginal swabs.

In June 2024, in advance of Defendant's trial, Moeykens reexamined the evidence in the 2010 sexual assault kit using more sensitive technology. Unlike the 2010 tests, these tests detected "no male DNA" on the vaginal swabs. Moeykens explained that DNA and body fluids such as semen, like any other biological material, "will degrade over time[.]"

During her June 2024 tests, Moeykens also performed DNA tests on five pubic hairs collected in the 2010 sexual assault kit. One hair tested positive for male DNA.

Moeykens testified Defendant was "included as a possible contributor, along with his paternal relatives, to the [hair's] DNA profile[.]"

At the close of the State's evidence, defense counsel moved to dismiss both charges. Regarding the First-Degree Rape charge, defense counsel argued the State had presented insufficient evidence to prove the required element of "a penis inserted into the vagina." The trial court denied the Motion. Defense counsel renewed the Motion to Dismiss at the close of all the evidence. The trial court denied it again.

On 28 August 2024, the jury returned guilty verdicts on both counts. Specifically, the jury convicted Defendant of First-Degree Murder on the theory of felony murder. The trial court entered Judgment on the First-Degree Murder conviction and sentenced Defendant to life imprisonment without parole. The trial court arrested judgment on the First-Degree Rape conviction.[5] Defendant gave oral

[5] Though neither party raises this issue, we note that in some cases, the effect of an arrest of judgment is to vacate the underlying verdict, thereby rendering it not reviewable on appeal. *See, e.g.*, *State v. Roman*, 203 N.C. App. 730, 733, 692 S.E.2d 431, 434 (2010) (dismissing issue as not "properly before this Court on appeal" where judgment on jury verdict convicting the defendant of obstruction of a public officer was arrested, the effect of which "was to vacate the verdict"). However, a different rule applies here. Defendant's First-Degree Rape conviction was the predicate felony underlying his First-Degree Murder conviction on the theory of felony murder. The trial court then arrested judgment on the First-Degree Rape conviction. Our Supreme Court has held "that when judgment is arrested on predicate felonies in a felony murder case to avoid a double jeopardy problem, the guilty verdicts on the underlying felonies remain on the docket and judgment can be entered if the conviction for the murder is later reversed on appeal, and the convictions on the predicate felonies are not disturbed upon appeal." *State v. Pakulski*, 326 N.C. 434, 439-40, 390 S.E.2d 129, 132 (1990).

In this case, the trial court did not explain its reasoning for arresting judgment on the First-Degree Rape conviction. However, our Supreme Court has "firmly establish[ed] the principle that a defendant may not be punished both for felony murder and for the underlying, 'predicate' felony, even in a single prosecution." *State v. Barlowe*, 337 N.C. 371, 380, 446 S.E.2d 352, 358 (1994) (citation and quotation

Notice of Appeal in open court.

## Issues

The issues on appeal are whether the trial court erred by: (I) ruling Defendant was competent to stand trial; and (II) denying Defendant's Motions to Dismiss the First-Degree Rape charge.

## Analysis

I. Competency

Defendant argues the trial court "had a constitutional duty to order an evaluation of Defendant's competency at the time of the trial" and its "failure to order an evaluation close to the time of trial or during the trial violated [his] constitutional right to due process and a fair trial." In response, the State contends Defendant "confuses and conflates a defendant's due process right to a competency *hearing* with the trial court's discretionary authority to order a medical [competency] *evaluation* pursuant to" our statutes. (emphasis in original).

Under the Due Process Clause of the United States Constitution, a criminal defendant may not be tried unless he is competent. *Pate v. Robinson*, 383 U.S. 375, 378, 86 S. Ct. 836, 839, 15 L. Ed. 2d 815, 818 (1966). Under our General Statutes:

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marks omitted). Instead, the predicate felony "merges into the murder conviction" and "provides no basis for an additional sentence, and any judgment imposed thereon must be arrested." *Id.* (citation omitted). Here, the trial court plainly applied this principle in arresting judgment on the First-Degree Rape conviction. Therefore, this Court has appellate jurisdiction over Defendant's challenge to the First-Degree Rape conviction because, although judgment on it was arrested, the underlying guilty verdict was not vacated. *See Pakulski*, 326 N.C. at 439-40, 390 S.E.2d at 132.

> [n]o 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) (2025).

"In order to possess the competence necessary to stand trial, a defendant must have 'the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense.' " *State v. Hollars*, 376 N.C. 432, 441-42, 852 S.E.2d 135, 142 (2020) (quoting *Drope v. Missouri*, 420 U.S. 162, 171, 95 S. Ct. 896, 903, 43 L. Ed. 2d 103, 113 (1975)); *see also State v. Bundridge*, 294 N.C. 45, 49-50, 239 S.E.2d 811, 815 (1978) (test for capacity to stand trial is "whether [the defendant] has capacity to comprehend his position, to understand the nature of the proceedings against him, to conduct his defense in a rational manner and to cooperate with his counsel so that any available defense may be interposed"). "[T]he relevant period of time for judging a defendant's competence to stand trial is at the time of trial." *Hollars*, 376 N.C. at 442, 852 S.E.2d at 142 (citation and quotation marks omitted).

"The question of whether a defendant has the capacity to stand trial is one within the trial court's discretion[.]" *State v. Wolfe*, 157 N.C. App. 22, 30, 577 S.E.2d 655, 661 (2003) (citations omitted). In determining a defendant's capacity, "it is the [trial] court's duty to resolve conflicts in the evidence; the court's findings of fact are conclusive on appeal if there is competent evidence to support them, even if there is

also evidence to the contrary." *State v. Heptinstall*, 309 N.C. 231, 234-35, 306 S.E.2d 109, 111 (1983) (citations omitted). "[T]he trial court's decision that [a] defendant was competent to stand trial will not be overturned absent a showing that the trial [court] abused [its] discretion." *State v. McClain*, 169 N.C. App. 657, 663, 610 S.E.2d 783, 787 (2005) (citation omitted).

"[T]he trial court has a statutory duty to hold a hearing to resolve questions of competency" if the issue is raised at any time by the prosecutor, the defendant, defense counsel, or the trial court. *State v. Chukwu*, 230 N.C. App. 553, 561-62, 749 S.E.2d 910, 916 (2013) (citation omitted); N.C. Gen. Stat. § § 15A-1002(a)-(b)(1). As part of this inquiry, the trial court "*may* appoint one or more impartial medical experts . . . to examine the defendant" and "*may* order the defendant to a State facility for the mentally ill for observation and treatment . . . to determine the defendant's capacity to proceed." N.C. Gen. Stat. § § 15A-1002(b)(1a), (b)(2) (emphasis added). "The trial court has the power on its own motion to order such an evaluation as part of an inquiry into the defendant's capacity to proceed." *State v. Grooms*, 353 N.C. 50, 78, 540 S.E.2d 713, 730 (2000) (citation omitted). "Thus, although a defendant has the right to a hearing on his capacity when that question is properly raised, whether to have a defendant examined by a medical expert is within the trial court's discretion." *State v. McGuire*, 297 N.C. 69, 85, 254 S.E.2d 165, 175 (1979) (citation omitted); *accord State v. O'Neal*, 116 N.C. App. 390, 395, 448 S.E.2d 306, 310 (1994) ("[T]he question of whether the defendant is to be examined by a psychiatric expert

is within the sole discretion of the trial court." (first citing *McGuire*, 297 N.C. at 85, 254 S.E.2d at 175; then citing N.C. Gen. Stat. § 15A-1002(b)(1)).

Along with the statutory duty to hold a competency hearing if capacity is questioned, the "trial court has a constitutional duty to institute, *sua sponte*, a competency hearing *if there is substantial evidence before the court* indicating that the accused may be mentally incompetent." *State v. Badgett*, 361 N.C. 234, 259, 644 S.E.2d 206, 221 (2007) (emphasis in original) (citation and quotation marks omitted). "Substantial evidence which establishes a bona fide doubt as to a defendant's competency may be established by considering a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial." *Hollars*, 376 N.C. at 442, 852 S.E.2d at 142 (citation and quotation marks omitted).

On appeal, Defendant does not challenge the statutory or constitutional adequacy of the multiple *sua sponte* competency hearings the trial court held in response to the capacity concerns raised by standby counsel. Rather, the crux of Defendant's argument is as follows: because of his history of mental illness and allegations he was suffering from ongoing delusions at trial, constitutional due process required the trial court to order a mental health evaluation to assess his capacity closer to the time of trial or during the trial.[6]

[6] In essence, Defendant argues that under certain circumstances due process requires the trial court to exercise its discretionary authority to order a psychiatric evaluation under N.C. Gen. Stat. § 15A-1002(b).

The only pertinent authority Defendant cites for this argument is *State v. Grooms*. There, our Supreme Court advised: "Where a defendant demonstrates or where matters before the trial court indicate that there is a *significant possibility* that a defendant is incompetent to proceed with trial, the trial court *must* appoint an expert or experts to inquire into the defendant's mental health in accord with N.C.G.S. § 15A-1002(b)(1)."[7] *Grooms*, 353 N.C. at 78, 540 S.E.2d at 730 (emphasis added) (citing *State v. Rich*, 346 N.C. 50, 61, 484 S.E.2d 394, 401 (1997)).

*Grooms* did not explain the types of evidence that could potentially demonstrate a "significant possibility" of incompetence requiring the trial court to order an expert mental health evaluation. In fact, our Supreme Court ultimately held "the trial court did not err in deciding not to order the evaluation." *Id.* at 78, 540 S.E.2d at 731. In support of this conclusion, the Court observed that the defendant "was adamant and unequivocal about not wanting a mental-health examination; . . . fully understood the proceedings and his rights; . . . [and] assisted in his own defense throughout trial by directing the filing of motions, the questioning of witnesses, and the presentation of evidence; . . . ." *Id.* at 78, 540 S.E.2d at 730-31.

Here, like the defendant in *Grooms*, Defendant was "adamant" he was competent and did not want further mental health evaluations. *Id.* at 78, 540 S.E.2d at 730. For instance, on the first day of trial, Defendant declared he was "more than

[7] Defendant recites this quote from *Grooms* but does not explain it, much less apply it to the facts of this case.

coherent" and opposed "further disturbances about mental health or my capacity to proceed." Defendant also engaged in lengthy colloquies with the trial court during the competency hearings, in which he demonstrated he "fully understood the proceedings and his rights." *Id.* at 78, 540 S.E.2d at 731. Defendant gave lucid and responsive answers during these colloquies—conduct our appellate courts have considered indicative of competency. *See, e.g., State v. Flow*, 384 N.C. 528, 554-55, 886 S.E.2d 71, 90 (2023) (trial court's "multiple lengthy colloquies" wherein defendant's responses were "lucid and appropriate" was "especially pertinent [evidence] because it directly relates to the crux of competency—whether a defendant, regardless of any mental or emotional disturbance, has the present ability" to "engage meaningfully" with counsel and the legal proceedings); *State v. Williams*, 267 N.C. App. 676, 689, 833 S.E.2d 683, 691 (2019) (defendant's lucid and responsive answers during lengthy colloquy with the trial court supported determination he was competent).

Moreover, surpassing the *Grooms* defendant, Defendant did not merely assist in his defense—he represented himself for most of the trial. For instance, he questioned and moved to strike prospective jurors, gave an opening statement, and cross-examined many of the State's witnesses, including the digital forensics expert and the medical examiner. And when Defendant decided to cede the lead counsel role to Kabakoff, Kabakoff informed the trial court Defendant had "definitely" understood and rejected his recommendation to move for a mistrial or for a continuance.

On appeal, Defendant emphasizes his history of mental illness to substantiate

his argument the trial court was required to order a mental health evaluation closer to or during his trial. However, "[e]vidence that a defendant suffers from mental illness is not dispositive on the issue of competency." *State v. Pratt*, 152 N.C. App. 694, 697, 568 S.E.2d 276, 278 (2002) (citations omitted). Here, the trial court was aware of Defendant's mental health history, but it also "had the opportunity to personally observe [D]efendant and draw independent conclusions regarding his capacity to proceed, the determination of which was within [its] discretion." *Id.* at 697, 568 S.E.2d at 278-79 (citation omitted). Throughout his trial, Defendant also "demonstrated a strong understanding of the proceedings against him, and consistently addressed the trial court with appropriate deference and intelligent responses." *Badgett*, 361 N.C. at 260, 644 S.E.2d at 221. In light of this evidence Defendant was competent to stand trial—indeed, to lead his own defense at trial—we cannot say Defendant's conduct or other matters before the trial court demonstrated a "significant possibility" he was incompetent such that the trial court was required to order an expert mental health evaluation under Section 15A-1002(b). *Grooms*, 353 N.C. at 78, 540 S.E.2d at 730.

In sum, the trial court satisfied its statutory and constitutional obligations by holding multiple *sua sponte* competency hearings when standby counsel raised capacity concerns. *See Chukwu*, 230 N.C. App. at 561-62, 749 S.E.2d at 916 (explaining statutory duty); *Badgett*, 361 N.C. at 259, 644 S.E.2d at 221 (explaining constitutional duty). Moreover, the trial court had sole discretion over whether to

order an evaluation under Section 15A-1002(b), *see McGuire*, 297 N.C. at 85, 254 S.E.2d at 175, and nothing before the trial court conveyed a "significant possibility" Defendant was incompetent such that it was required to order an evaluation under *Grooms*. Thus, because the Record supports the trial court's Findings of Fact on the issue of Defendant's capacity to proceed, those Findings are conclusive on appeal. *See Heptinstall*, 309 N.C. at 234-35, 306 S.E.2d at 111. Therefore, the trial court did not abuse its discretion in concluding Defendant was competent to stand trial. *See McClain*, 169 N.C. App. at 663, 610 S.E.2d at 787.

II. Motions to Dismiss

Defendant argues the trial court erred by denying his Motions to Dismiss the First-Degree Rape charge for insufficient evidence. We disagree.

In ruling on a motion to dismiss, the trial court's task is to decide "whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of [the] defendant's being the perpetrator of such offense. If so, the motion is properly denied." *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000) (citation and quotation marks omitted). "The evidence is 'substantial' if it is relevant and adequate to convince a reasonable mind to accept a conclusion." *State v. Ford*, 388 N.C. 713, 720, 923 S.E.2d 549, 554 (2025) (citation and quotation marks omitted). However, "[i]f the evidence is sufficient only to raise a suspicion or conjecture" that the defendant committed the crime, the trial court must grant the motion to dismiss. *Fritsch*, 351 N.C. at 378, 526 S.E.2d at 455 (citation and

quotation marks omitted).

"In deciding whether the evidence presented is substantial, the trial court must view the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences[.]" *Ford*, 388 N.C. at 720, 923 S.E.2d at 554 (citations and quotation marks omitted). "Any contradictions or conflicts in the evidence must be resolved in the State's favor." *Id.* (citation omitted). "The test for sufficiency of the evidence is the same whether the evidence is direct or circumstantial or both." *Fritsch*, 351 N.C. at 379, 526 S.E.2d at 455 (citation and quotation marks omitted).

"When ruling on a motion to dismiss, the trial court should be concerned only about whether the evidence is sufficient for jury consideration, not about the weight of the evidence." *Id.* at 379, 526 S.E.2d at 455-56 (citation omitted). "Whether the State presented substantial evidence of each essential element of the offense is a question of law; therefore, we review the denial of a motion to dismiss de novo." *State v. Crockett*, 368 N.C. 717, 720, 782 S.E.2d 878, 881 (2016) (citation omitted).

"A person is guilty of first-degree forcible rape if the person engages in vaginal intercourse with another person by force and against the will of the other person, and . . . [i]nflicts serious personal injury upon the victim[.]" N.C. Gen. Stat. § 14-27.21(a)(2). "The slightest penetration of the female sex organ by the male sex organ is sufficient to constitute vaginal intercourse within the meaning of the statute." *State v. McNicholas*, 322 N.C. 548, 556, 369 S.E.2d 569, 574 (1988) (citation omitted).

Defendant argues the State did not prove the essential element of vaginal

intercourse because "all of the testing excluded Defendant's DNA" from the vaginal swabs in the sexual assault kit. We disagree.

The State presented evidence tending to show Defendant was alone in the apartment with Brittani for several hours on 5 May 2010. Multiple Family Members testified Brittani was bleeding from her vaginal area when they found her unresponsive in her bedroom. Dr. Owens testified the autopsy showed vaginal injuries consistent with "forceful penetration where the person was resisting the activity." This constitutes substantial evidence of the crime's essential element of vaginal intercourse. *See* N.C. Gen. Stat. § 14-27.21(a). It does not matter that this evidence is circumstantial. *See Fritsch*, 351 N.C. at 379, 526 S.E.2d at 455.

Defendant's reliance on allegedly exculpatory DNA evidence is misplaced for several reasons. First, Defendant ignores Moeykens's 2024 tests showing he was a possible contributor of DNA to a male pubic hair collected during the 6 May 2010 autopsy. Thus, even if tests of the vaginal swabs did not reveal the presence of his DNA, a separate DNA test linked him to the crime. *Cf. State v. Styles*, 93 N.C. App. 596, 603-04, 379 S.E.2d 255, 260-61 (1989) (combined with other circumstantial evidence, hairs found at the crime scene that "were microscopically consistent" with the defendant's hairs "and could have originated from the defendant" supported denial of motion to dismiss rape charge).

Moreover, Defendant fails to recognize "vaginal intercourse" within the meaning of the First-Degree Rape statute can occur without the release of semen. *See*

*McNicholas*, 322 N.C. at 556, 369 S.E.2d at 574 (this element only requires evidence of "slightest penetration" of the victim's vagina by the defendant's penis). Therefore, theoretically setting aside the vaginal swab DNA tests, a reasonable jury could have convicted Defendant based on other evidence indicating vaginal intercourse occurred, such as Dr. Owens's testimony that Brittani's vaginal injuries were consistent with forceful penetration.[8] *See Fritsch*, 351 N.C. at 379, 526 S.E.2d at 455 ("Once the court decides that a reasonable inference of defendant's guilt may be drawn from the circumstances, then it is for the jury to decide whether the facts, *taken singly or in combination*, satisfy [it] beyond a reasonable doubt that the defendant is actually guilty." (emphasis and alteration in original) (citation and quotation marks omitted)).

Thus, viewed in the light most favorable to the State, the evidence was sufficient to submit the First-Degree Rape charge to the jury. Therefore, the trial court did not err by denying Defendant's Motions to Dismiss. *See id*. at 378, 526 S.E.2d at 455.

## Conclusion

Accordingly, for the foregoing reasons, we conclude there was no error at

[8] Moeykens also gave her expert opinion that "washing" and "wiping" could affect the presence of another person's DNA on the body; Dawn testified the Family Members tried to revive Brittani by washing and wiping her body with warm water and towels. Moreover, Moeykens opined the presence of blood "can overwhelm trace amounts of DNA from a second contributor" in the same area of the bleeding person's body; Family Members testified Brittani was bleeding from her vaginal area when she was found in her bedroom. Thus, a jury could reasonably infer the washing, wiping, and bleeding could help explain the absence of Defendant's DNA on the vaginal swabs—and on review of the denial of a motion to dismiss, this Court gives the State the benefit of all reasonable inferences from the evidence. *See Ford*, 388 N.C. at 720, 923 S.E.2d at 554.

Defendant's trial and affirm the Judgments.

NO ERROR.

Judges STROUD and FREEMAN concur.