Case Brief: *State v. King*[*]

INTRODUCTION

Though nearing extinction in the modern system of pleas,[1] juries were often praised by the Founders.[2] Thomas Jefferson famously described juries as "the only anchor, ever yet imagined by man, by which a government can be held to the principles of its constitution."[3] Alexander Hamilton echoed that juries were either "a valuable safeguard to liberty" or "the very palladium of free government."[4] Coupling them with representative government more broadly, John Adams considered juries to be "the heart and lungs" of liberty, and the "fortification against . . . being ridden like horses, fleeced like sheep, worked like cattle, and fed and clothed like swine and hounds."[5]

In *State v. King*,[6] Jason William King's jury trial right was unquestionably violated.[7] After his trial, Mr. King was convicted of driving while impaired ("DWI") and reckless driving.[8] At sentencing, despite Section 20-179(a1)(2) requiring a jury to find aggravating factors, the presiding judge found three

1. *See* WILSON CTR. FOR SCI. & JUST. AT DUKE UNIV., PLEA TRACKING IN THE DURHAM COUNTY DISTRICT ATTORNEY'S OFFICE: ONE-YEAR REPORT 4 (2023) ("In North Carolina and most other states, roughly 90-95% of criminal cases are resolved through plea bargaining.").

2. In fact, Gouverneur Morris—the "Penman of the Constitution"—indicated that the jury trial may have sparked the Founding itself. *See* LIVINGSTON RUTHERFURD, JOHN PETER ZENGER: HIS PRESS, HIS TRIAL AND A BIBLIOGRAPHY OF ZENGER IMPRINTS 131 (1904) (describing Zenger's trial as "the germ of American Freedom, [and] the morning star of liberty that subsequently revolutionized America"). This account is corroborated by the Continental Congress's explicit inclusion of the deprivation of colonial juries in its list of grievances against King George. *See* THE DECLARATION OF INDEPENDENCE para. 19 (U.S. 1776).

3. Letter from Thomas Jefferson to Thomas Paine (July 11, 1789), *in* 15 THE PAPERS OF THOMAS JEFFERSON 266, 269 (Princeton Univ. Press ed., 1967).

4. THE FEDERALIST NO. 83, at 421 (Alexander Hamilton) (Ian Shapiro ed., 2009).

5. Letter from Clarendon to W. Pym (Jan. 27, 1766), *in* 1 PAPERS OF JOHN ADAMS 164, 169 (Belknap Press of Harv. Univ. Press ed., 1977). Adams was not the only one to compare juries to elected representatives. *See* Letter from Thomas Jefferson to the Abbé Arnoux (July 19, 1789), *in* 15 THE PAPERS OF THOMAS JEFFERSON, *supra* note 3, at 283 ("Were I called upon to decide whether the people had best be omitted in the Legislative or Judiciary department, I would say it is better to leave them out of the Legislative.").

6. 386 N.C. 601, 906 S.E.2d 808 (2024).

7. *See* Oral Argument at 03:05, State v. King, 386 N.C. 601, 906 S.E.2d 808 (2024) (No. 119A23), https://www.youtube.com/watch?v=zSkrYEPnrRg [https://perma.cc/B7NC-XQPM] (Statement of State's attorney) (acknowledging that the "trial court's findings of fact-based aggravators, instead of submitting them to the jury, is both illegal under 20-179(a1)(2) and unconstitutional pursuant to the Sixth Amendment and *Blakely*").

8. *King*, 386 N.C. at 602, 906 S.E.2d at 810.

aggravating factors for the DWI in violation of Mr. King's statutory right to a jury trial.[9] Mr. King appealed to the North Carolina Court of Appeals, which vacated both convictions and remanded for new sentencing hearings.[10] In doing so, the court of appeals refused to apply harmless error analysis to the trial court's violation of Mr. King's jury trial right under Section 20-179(a1)(2).[11] The State appealed, arguing that the court of appeals should have applied harmless error analysis to the error.[12]

The Supreme Court of North Carolina agreed with the State.[13] The court reasoned that the statute did not expressly provide for structural error analysis, was only meant to comply with federal constitutional requirements, and mirrored a similar provision in the Structured Sentencing Act,[14] which receives harmless error analysis.[15] Justice Earls dissented.[16]

9. *Id.* The trial judge's findings no doubt also violated Mr. King's constitutional right to a jury trial. *See* Blakely v. Washington, 542 U.S. 296, 304 (2004); State v. Blackwell, 361 N.C. 41, 53, 638 S.E.2d 452, 460 (2006). However, Mr. King apparently "opted against pursuing a *Blakely* claim directly under the Sixth Amendment," *see King*, 386 N.C. at 609, 906 S.E.2d at 815, though his original appellate brief to the North Carolina Court of Appeals suggested otherwise, *see* Defendant-Appellant's Brief at 15, State v. King, 288 N.C. App. 459, 886 S.E.2d 633 (2023) (No. COA22-469) ("In sentencing Mr. King for impaired driving, the trial court considered an aggravating factor that was not authorized by law, violated the statutory mandates that aggravating factors be noticed by the State and proven to the jury, *and violated Mr. King's Sixth Amendment right to a jury trial*." (emphasis added)).

10. *King*, 288 N.C. App. at 464–67, 886 S.E.2d at 637–39, *rev'd*, 386 N.C. 601, 906 S.E.2d 808 (2024). The State conceded that Mr. King was entitled to a new sentencing hearing for the reckless driving conviction because the trial judge "did not include any specific findings when it sentenced" Mr. King to a longer probation period than prescribed by Section 15A-1343.2(d)(1). *See id.* at 467, 886 S.E.2d at 638–39.

11. *King*, 288 N.C. App. at 466–67, 886 S.E.2d at 638. Under the harmless error doctrine, a court may affirm a conviction or sentence provided that the error is not prejudicial. *See* N.C. GEN. STAT. § 15A-1442(4) (requiring prejudice to reverse procedural errors in criminal cases); *id.* § 15A-1443 (defining prejudice and allocating burden of proof).

12. *See* New Brief for the State at 11–20, *King*, 386 N.C. at 601, 906 S.E.2d at 808 (No. 119A23).

13. *See King*, 386 N.C. at 602, 906 S.E.2d at 810.

14. Act of July 24, 1993, ch. 538, 1993 N.C. Sess. Laws 2298 (codified as amended in scattered sections of N.C. GEN. STAT.).

15. *King*, 386 N.C. at 605–09, 906 S.E.2d at 812–15.

16. *Id.* at 611–19, 906 S.E.2d at 816–21 (Earls, J., dissenting).

FACTS OF THE CASE

Mr. King was convicted in Buncombe County District Court of DWI, reckless driving, possession of marijuana, and possession of marijuana paraphernalia.[17] The judge imposed a Level IV punishment for the DWI offense and sentenced Mr. King to 120 days in jail.[18] Mr. King appealed his convictions to the superior court.[19] Following a jury trial, Mr. King was acquitted of the drug-related charges but was still convicted of the traffic violations.[20] The presiding judge then imposed a Level III punishment and sentenced Mr. King to six months' imprisonment.[21] The judge based her sentence on three aggravating factors.[22] Specifically, the judge found that Mr. King had a prior conviction for misdemeanor death by vehicle and that Mr. King's driving was "especially reckless" and "especially dangerous."[23] Mr. King appealed, arguing that the trial court's violation of Subsection 20-179(a1)(2) was reversible error.[24]

The North Carolina Court of Appeals agreed with Mr. King.[25] In refusing to apply harmless error analysis, the court relied heavily on *State v. Geisslercrain*,[26] where the previous panel "did not apply harmless error," but instead reversed because "the finding . . . placed the defendant at another DWI Level punishment."[27] The court also reasoned that the "legislature is free to provide more protection than constitutionally required,"[28] and Subsection 20-179(a1)(2) "unequivocally states that '*only a jury may determine if an aggravating*

17. *Id.* at 602, 906 S.E.2d at 810 (majority opinion). Some, like Justice Stevens, would consider this the first violation of Mr. King's jury trial right. *See* Ludwig v. Massachusetts, 427 U.S. 618, 632–38 (Stevens, J., dissenting).

18. *King*, 386 N.C. at 602, 906 S.E.2d at 810. Mr. King's 120-day sentence was ultimately suspended with twelve months' supervised probation and a seven-day split sentence. *Id.*

19. Under North Carolina law, Mr. King was entitled to be released from jail after filing his notice of appeal. *See* Defendant-Appellee's New Brief at 5, *King*, 386 N.C. 601, 906 S.E.2d 808 (No. 119A23) (citing N.C. GEN. STAT. § 15A-1431(f1)). But Mr. King's notice was not logged or recorded by the clerk's office, and jail officials refused to release him. *See id.* After three days of unlawful incarceration—during which jail officials failed to give Mr. King his prescribed medicine for epilepsy—Mr. King suffered a seizure. *See id.* During the seizure, Mr. King "fell and slammed his head on the floor of the county jail, resulting in a concussion," which caused "long-term symptoms, including memory loss." *See id.* at 5–6.

20. *King*, 386 N.C. at 602, 906 S.E.2d at 810.

21. *Id.*

22. *See id.*

23. *Id.* Notably, Mr. King's prior misdemeanor conviction is likely not a statutory aggravating factor. *See* Defendant-Appellee's New Brief at 6, *King*, 386 N.C. 601, 906 S.E.2d 808 (No. 119A23) (citing N.C. GEN. STAT. § 20-179(d)(5)). In any event, the prosecution only provided notice for the "especially reckless" factor. *See id.*

24. *See id.* at 9–23.

25. *See* State v. King, 288 N.C. App. 459, 464, 886 S.E.2d 633, 637 (2023).

26. 233 N.C. App. 186, 756 S.E.2d 92 (2014).

27. *King*, 288 N.C. App. at 466, 886 S.E.2d at 638.

28. *Id.*

factor is present.'"[29] Dissenting, Judge Gore argued that harmless error should apply because the statute was merely enacted "to address the missing statutory procedural mechanism" for sending aggravating factors to the jury.[30]

LEGAL ISSUE AND OUTCOME

The Sixth Amendment to the United States Constitution guarantees the right to a jury trial in criminal cases.[31] In *Apprendi v. New Jersey*,[32] the United States Supreme Court held that "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt."[33] Four years later, in *Blakely v. Washington*,[34] the Court extended *Apprendi* to sentencing guidelines.[35] However, in *Washington v. Recuenco*,[36] the Court held that *Blakely* errors are subject to harmless error review.[37]

Section 20-179 of the North Carolina General Statutes is often referred to as the "DWI sentencing statute."[38] Originally, Subsection 20-179(a1)(2) of the DWI sentencing statute allowed judges to find aggravating factors.[39] However, after *Blakely*, the North Carolina General Assembly amended the provision to read:

> The defendant may admit to the existence of an aggravating factor, and the factor so admitted shall be treated as though it were found by a jury

29. *Id.* (quoting N.C. GEN. STAT. § 20-179(a1)(2)).

30. *Id.* at 469, 886 S.E.2d at 640 (Gore, J., dissenting).

31. U.S. CONST. amend. VI ("[T]he accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . ."). The North Carolina Constitution offers similar protections. *See* N.C. CONST. art. I, § 24 ("No person shall be convicted of any crime but by the unanimous verdict of a jury in open court . . . .").

32. 530 U.S. 466 (2000).

33. *Id.* at 490.

34. 542 U.S. 296 (2004).

35. *Id.* at 303 ("Our precedents make clear, however, that the 'statutory maximum' for *Apprendi* purposes is the maximum sentence a judge may impose *solely on the basis of the facts reflected in the jury verdict or admitted by the defendant*." (emphasis in original)); *see also* State v. Allen, 359 N.C. 425, 440–41, 615 S.E.2d 256, 266–67 (2005) (incorporating *Blakely* into North Carolina's jurisprudence—and refusing to extend harmless error analysis to *Blakely* errors).

36. 548 U.S. 212 (2006).

37. *Id.* at 222 ("Failure to submit a sentencing factor to the jury, like failure to submit an element to the jury, is not structural error."); *see also* State v. Blackwell, 361 N.C. 41, 42, 638 S.E.2d 452, 453 (2006) (overruling *Allen* and incorporating *Recuenco*'s harmless error rule into North Carolina's jurisprudence).

38. *See* State v. King, 386 N.C. 601, 611, 906 S.E.2d 808, 816 (2024) (Earls, J., dissenting).

39. *See* State v. King, 288 N.C. App. 459, 465, 886 S.E.2d 633, 637 (2023) (citing Act of 1997, 1998-182, § 25, 1997 N.C. Sess. Laws 592, 618–19 (codified as amended at N.C. GEN. STAT § 20-179(a))).

> pursuant to the procedures in this section. If the defendant does not so admit, *only a jury may determine if an aggravating factor is present*.[40]

In *State v. Geisslercrain*, the North Carolina Court of Appeals held that violations of Subsection 20-179(a1)(2) are structural and not subject to harmless error analysis.[41] However, the court of appeals also issued two earlier opinions that applied harmless error analysis to the provision.[42]

On appeal in *King*, the State asked the supreme court to resolve the lower court's inconsistencies and rule that violations of Section 20-179(a1)(2) are subject to harmless error analysis.[43] Noting that harmless error applies to *Blakely* errors under the Sixth Amendment and the Structured Sentencing Act, the State argued that harmless error analysis "promotes public respect for the criminal process by focusing on the underlying fairness of the trial rather than on the virtually inevitable presence of immaterial error."[44] The State also argued that harmless error applied to the DWI sentencing statute before it was amended, and those amendments "simply clarified the procedural mechanism for submitting aggravating factors to the jury."[45]

40. *See* § 20-179(a1)(2) (emphasis added).

41. State v. Geisslercrain, 233 N.C. App. 186, 190, 756 S.E.2d 92, 95 (2014), *overruled by*, *King*, 386 N.C. 601, 906 S.E.2d 808.

42. *See* New Brief for the State at 15, *King*, 386 N.C. 601, 906 S.E.2d 808 (No. 119A23) (citing State v. Coffey, 189 N.C. App. 382, 658 S.E.2d 73 (2008); State v. Wood, 221 N.C. App. 246, 725 S.E.2d 923 (2012)).

43. *See* Reply Brief for the State at 10, *King*, 386 N.C. 601, 906 S.E.2d 808 (No. 119A23) ("In light of the nearly fifteen years of inconsistent opinions from the Court of Appeals, and in accordance with the instant dissent, this Court should now clarify that its *Blackwell* holding regarding harmless error review is also applicable to *Blakely* errors committed during DWI sentencing.").

44. *See* New Brief for the State at 16, *King*, 386 N.C. 601, 906 S.E.2d 808 (No. 119A23) (quoting State v. Malachi, 371 N.C. 719, 734, 821 S.E.2d 407, 418 (2018)).

45. *Id.* at 13 (citing State v. King, 288 N.C. App. 459, 468–69, 886 S.E.2d 633, 639–40 (2023) (Gore, J., dissenting)).

Ultimately, the Supreme Court of North Carolina held that violations of Section 20-179(a1)(2) are subject to harmless error analysis because the General Assembly only enacted the statute "to bring DWI sentencing into compliance with *Blakely*."[46] The majority first noted that the text of Section 20-179(a1)(2) "nowhere states that a violation automatically entitles a defendant to a new sentencing hearing."[47]

The majority also relied heavily on Subsection 15A-1340.16(a1) of the Structured Sentencing Act, noting that the text of Subsection 20-179(a1)(2) was "copied . . . nearly verbatim from" that provision.[48] "This fact alone," according to the majority, "strongly indicates that the legislature expected *Blakely* errors to receive the same treatment under either provision."[49] The majority also noted a lack of "any obvious policy reason" for applying harmless error analysis to convictions under the Structured Sentencing Act but not to DWI offenses.[50] The court said that, if the legislature wanted to "mandate automatic reversal for *Blakely* errors," then it "would have said so somewhere in the legislation."[51] Consequently, the court reversed the court of appeals' decision and remanded the case to determine the issue of prejudice.[52]

Justice Earls dissented.[53] After briefly surveying the history of Subsection 20-179(a1)(2),[54] Earls argued that harmless error should not apply to the

46. *King*, 386 N.C. at 606, 906 S.E.2d at 813.

47. *Id.* at 605–06, 906 S.E.2d at 812. The court has used this hyper-textualist approach to statutory interpretation in other recent cases. *See, e.g.*, State v. Singleton, 386 N.C. 183, 201, 900 S.E.2d 802, 815 (2024) ("Our Constitution is clear. Where it discusses indictments, it does not discuss jurisdiction—where it discusses jurisdiction, it does not discuss indictments."); State v. Daw, 386 N.C. 468, 486, 904 S.E.2d 765, 778 (2024) (Earls, J., dissenting) ("The majority's analysis is textually dishonest, divorced from context, incongruent with precedent, and belied by history.").

48. *King*, 386 N.C. at 609, 906 S.E.2d at 814.

49. *Id.* at 609, 906 S.E.2d at 814–15.

50. *Id.* at 609, 906 S.E.2d at 815. This search for legislative purpose seems in tension with the court's oft-repeated assertion that it is "an error-correcting body, not a policy-making or law-making one." *See* Connette for Gaullette v. Charlotte-Mecklenburg Hosp. Auth., 382 N.C. 57, 71, 876 S.E.2d 420, 430 (2022). For an excellent discussion of the previous case, see generally Laura Fisher, Recent Development, *With More Power Comes More Responsibility: The Supreme Court of North Carolina Acknowledges Nurse Autonomy, but Clearer Guidelines Surrounding Liability Are Needed*, 101 N.C. L. REV. 1823 (2023).

51. *Id.* at 608, 906 S.E.2d at 814.

52. *Id.* at 610–11, 906 S.E.2d at 816. On remand, the court of appeals spilled little ink in finding the violation harmless. *See* State v. King, 297 N.C. App. 623, 910 S.E.2d 449, 2025 WL 97804, at *1 (2025)(unpublished table decision) ("Defendant argues that he is entitled to resentencing because the trial court, rather than a jury, determined the aggravating factors for purposes of sentencing. *Based upon the directive from our Supreme Court*, we disagree." (emphasis added)).

53. *King*, 386 N.C at 611–19, 906 S.E.2d at 816–21 (Earls, J., dissenting).

54. *Id.* at 612–13, 906 S.E.2d at 817.

provision.[55] Earls contended that the statute unambiguously stated that "only a jury may determine if an aggravating factor is present," and, as a result, "there is no room for judicial construction and the courts must construe the statute using its plain meaning."[56] In other words, "the majority's reading of the statute contradicts its plain text" by "allow[ing] a judge to find for herself any aggravating factors, only to be overturned if a different judge guesses that a jury would have reached a different result."[57] Beyond the provision's text, Earls noted that Section 20-179(a1)(2) "goes beyond *Blakely*'s constitutional floor with other mandates," including imposing a notice requirement on the State.[58] Lastly, Earls questioned why the majority remanded Mr. King's case to the court of appeals, noting that remand neither advances "the interests of judicial economy" nor "the expeditious resolution of cases."[59]

POTENTIAL IMPACT

Most obviously, *King* presents a significant hurdle for defendants alleging *Blakely* errors under Section 20-179(a1)(2) on appeal. While the defendant's burden for showing prejudice may appear rather liberal on its face,[60] North Carolina's state appellate courts have been reluctant to reverse statutory errors.[61] This was certainly true of the violation in Mr. King's case. On remand, the court of appeals unanimously held that the trial court's finding of the

55. *See id.* at 613, 906 S.E.2d at 817–18 ("I would hold that a faithful reading of the plain text of the statute requires that such a violation is reversible error that entitles a defendant to a new sentencing hearing.").

56. *Id.* at 613, 906 S.E.2d at 818 (first quoting N.C. GEN. STAT. § 20-179(a1)(2); and then quoting State v. White, 372 N.C. 248, 251, 827 S.E.2d 80, 82 (2019)).

57. *Id.* at 614, 906 S.E.2d at 818.

58. *Id.*

59. *Id.* at 618, 906 S.E.2d at 821.

60. *See* N.C. GEN. STAT. § 15A-1443(a) (requiring the defendant to show "a reasonable possibility that, had the error in question not been committed, a different result would have been reached").

61. *See King*, 386 N.C. at 610, 906 S.E.2d at 815 (majority opinion) ("It is true that most trial court errors are not prejudicial . . . ."). In fact, the decision effectively writes Section 20-179(a1)(2) out of North Carolina's appellate jurisprudence. When a court finds a *Blakely* claim under the Sixth Amendment, the error is presumptively prejudicial, and the State must show that the error was harmless beyond a reasonable doubt. *See id.* at 609, 906 S.E.2d at 815 (citing § 15A-1443(b)). However, when the State finds the same error under Section 20-179(a1)(2), the burden shifts to the defendant to show a "reasonable possibility" that the result would have been different. *See id.* (quoting § 15A-1443(a)).

"especially reckless" aggravating factor was harmless,[62] even though "Mr. King's case did not show the signs of especially reckless driving often present."[63]

Of course, one must wonder why a defendant would bring a *Blakely* claim under Section 20-179(a1)(2) at all. As both the State and majority conceded, when a trial court violates Section 20-179(a1)(2), it also violates the Sixth Amendment.[64] When a court finds a *Blakely* claim under the Sixth Amendment, the error is presumptively prejudicial, and the State must show that the error was harmless beyond a reasonable doubt.[65] However, when the State finds the same error under Section 20-179(a1)(2), the burden shifts to the defendant to show a "reasonable probability" that the result would have been different.[66] Appellate defense lawyers will no doubt note this discrepancy, and Section 20-179(a1)(2) will quickly disappear from their appellate briefs.

The impact of *King* also extends beyond DWI sentencing. First, *King* illustrates the majority's continued extension of harmless error analysis to new facets of criminal procedure. As one group of scholars notes, "The distinction between harmless errors and those sufficiently harmful to cause a reversal has produced varying standards and a vast amount of judicial and academic verbiage."[67] But criminal practitioners in North Carolina have likely noted the court's recent expansion of the harmless error doctrine, which seemingly grows with each new batch of slip opinions.[68] For example, in recent years, the court has extended the harmless error doctrine to indictment defects,[69] violations of a

62. *See* State v. King, 297 N.C. App. 623, 910 S.E.2d 449, 2025 WL 97804, at *1 (2025)(unpublished table decision)

63. *See King*, 386 N.C. at 618, 906 S.E.2d at 820 (Earls, J., dissenting). For instance, there was no evidence that Mr. King "drove at an excessive speed, drove off the road, or that he hit anyone." *Id.* There was also conflicting testimony between the officers that pulled him over. *Id.*

64. *See* Reply Brief for the State at 1, *King*, 386 N.C. 601, 906 S.E.2d 808 (No. 119A23) ("[T]he trial court commits both a statutory and Sixth Amendment error when it finds aggravating factors rather than submitting them to a jury for determination."); *King*, 386 N.C. at 606, 906 S.E.2d at 813 (majority opinion) ("The legislature enacted N.C.G.S. § 20-179(a1)(2) to bring DWI sentencing into compliance with *Blakely* . . . .").

65. *See id.* at 609, 906 S.E.2d at 815 (citing § 15A-1443(b)).

66. *See id.* (quoting § 15A-1443(a)).

67. NEIL P. COHEN, STANLEY E. ADELMAN, LESLIE W. ABRAMSON, MICHAEL O'HEAR & WAYNE A. LOGAN, CRIMINAL PROCEDURE: THE POST-INVESTIGATIVE PROCESS 797 (5th ed. 2019); *see also* Dylan T. Silver, Recent Development, *Blowing Away the Smoke: Revealing the Harm in* State v. Gaddis*'s Harmless Error Analysis*, 102 N.C. L. REV. 1259, 1269 (2024) ("The question of how and why to distinguish between 'structural error' and 'trial error' has vexed many a court and commentator."). For an excellent summary of the academic debate and problems surrounding the harmless error doctrine, see *id.* at 1262–68.

68. *See King*, 386 N.C. at 610–11, 906 S.E.2d at 816.

69. *See* State v. Singleton, 386 N.C. 183, 185, 900 S.E.2d 802, 805 (2024).

defendant's right to court-provided trial transcripts,[70] and erroneous jury instructions.[71]

Despite the North Carolina Court of Appeals holding that violations of Subsection 20-179(a1)(2) had been structural for over a decade—with no intervention from the General Assembly—the court applied harmless error doctrine to Mr. King's case.[72] Frustratingly, the court's decision indicates its eagerness to extend harmless error analysis even when the doctrine's purpose is not being served. The principal justification for the harmless error doctrine is, without question, judicial efficiency.[73] However, Mr. King was already entitled to a new sentencing hearing for his reckless driving conviction, weakening the judicial economy counterarguments significantly.[74] Worse, although the parties briefed and argued the issue of prejudice,[75] the court remanded the issue to the court of appeals—while simultaneously denying Mr. King relief on the basis of judicial economy.[76] Thus, following *King*, practitioners should expect the short list of structural errors to continue waning.

Second, *King* reaffirms the majority's unyielding commitment to lockstep North Carolina law to federal precedent in criminal cases. Following Justice Brennan's influential *Harvard Law Review* article,[77] scholars began increasingly focusing on the deference given by state courts to federal precedent.[78] Historically, the Supreme Court of North Carolina has taken a "persuasive lockstep" approach to federal law, which "acknowledges federal precedent as

70. *See* State v. Gaddis, 382 N.C. 248, 252, 876 S.E.2d 379, 381–82 (2022).

71. *See* State v. Malachi, 371 N.C. 719, 740, 821 S.E.2d 407, 422 (2018).

72. *See King*, 386 N.C. at 610–11, 906 S.E.2d at 816.

73. *See* COHEN ET AL., *supra* note 67, at 797 ("If trials were required to be legally 'perfect' in all respects, virtually every conviction would be reversed on appeal, resulting in the possibility of never-ending litigation and a paralyzed legal system. To prevent this absurd situation, every jurisdiction has adopted a *harmless error rule*, which means that trial errors will ordinarily not merit appellate reversal unless the error was somehow significant." (emphasis in original)). And the Supreme Court of North Carolina is no stranger to prioritizing judicial economy over individual rights. *See, e.g.*, Sam W. Scheipers, Case Brief, State v. Flow—*Did the Trial Court Put the Cart Before the Horse?*, 103 N.C. L. REV. F. 23, 31 (2024) ("But make no mistake: in the meantime, defendants—particularly those who are neurodivergent or mentally ill—are at risk of having their right to stand trial only when competent subverted to promote judicial efficiency.").

74. *See* State v. King, 288 N.C. App. 459, 461, 886 S.E.2d 633, 634 (2023), *rev'd*, 386 N.C. 601, 906 S.E.2d 808.

75. *See* Defendant-Appellant's Brief at 21–23, *King*, 386 N.C. 601, 906 S.E.2d 808 (No. 119A23); Oral Argument at 06:24–09:55, State v. King, 386 N.C. 601 (No. 119A23), https://www.youtube.com/watch?v=zSkrYEPnrRg [https://perma.cc/L5K2-EGUX] (State's argument); *id.* at 25:26–29:17 (defense's argument).

76. *See King*, 386 N.C. at 610–11, 906 S.E.2d at 816.

77. William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489 (1977).

78. Molly S. Petrey & Christopher A. Brook, State v. Carter *and the North Carolina Exclusionary Rule*, 100 N.C. L. REV. F. 1, 9–11 (2021).

persuasive but reserves the right to deviate from it."[79] More recently, however, the court has shifted towards a more deferential, "strict lockstep" approach.[80] Just last term, for example, the court relied heavily on federal precedent to upend a centuries-old jurisdictional rule for defective indictments.[81]

In Mr. King's case, the court of appeals rejected this strict approach, reasoning that "the United States Constitution is the floor of constitutional protections in North Carolina, not the ceiling."[82] Yet, despite other provisions in Section 20-179 expressly providing more protection than constitutionally required, the state supreme court held that Subsection 20-179(a1)(2) was only meant "to bring DWI sentencing into compliance with *Blakely*."[83] If the legislature wanted to go beyond the federal constitution, it would have to expressly say so.[84] Given the court's trend towards the "strict lockstep" approach, practitioners should expect other statutory and state constitutional protections to crumble to the federal baseline, especially if the court continues to impose such a stringent requirement on the legislature. For instance, practitioners have long wondered if *State v. Carter*[85] will be next on the court's

79. *See id.* at 11.

80. *See id.* Notably, however, the "strict lockstep" approach has not been taken in several cases involving property interests. *See* Anita Earls, *Tar Heel Constitutionalism: The New Judicial Federalism in North Carolina*, 133 YALE L.J. F. 855, 869 (2024) (identifying "the North Carolina Supreme Court's full-throated endorsement of the judiciary's role in enforcing the fundamental right to property"); Richard Dietz, *Factories of Generic Constitutionalism*, 14 ELON L. REV. 1, 7–31 (2022) (arguing for more expansive protections under the Exclusive Emolument, Monopolies, Fruits of Their Labor, and Just and Equitable Tax clauses). The latter argument by Justice Dietz has been criticized:

> This may be "constitutional experimentation" of the form Justice Dietz envisioned, and it may provide "broader rights than those provided through the federal constitution." But in providing those rights to private businesses and not to the average worker, this experimentation is less consistent, less predictable, and less protective than North Carolinians otherwise might have hoped.

Drew Alexander, Recent Development, *Spoiling the "Fruits of Their Own Labor":* Mole' v. City of Durham, 103 N.C. L. REV. 313, 328 (2024) (footnote omitted).

81. *See* State v. Singleton, 386 N.C. 183, 900 S.E.2d 802 (2024). For an in-depth discussion of the preceding case, see William J. Etringer, Recent Development, *Occasional Originalism: How the Supreme Court of North Carolina Discarded Centuries-Old Constitutional Law in* State v. Singleton, 104 N.C. L. REV. __ (2025) (forthcoming April 2026).

82. State v. King, 288 N.C. App. 459, 466, 886 S.E.2d 633, 638 (2023), *rev'd*, 386 N.C. 601, 906 S.E.2d 808 (2024).

83. *King*, 386 N.C. at 606, 906 S.E.2d at 813.

84. *See id.* at 608–09, 906 S.E.2d at 814.

85. 322 N.C. 709, 370 S.E.2d 553 (1988). *Carter* famously refused to incorporate the Fourth Amendment's then-infant "good-faith exception," *see* United States v. Leon, 468 U.S. 897, 925 (1984), to the North Carolina Constitution's prohibition against general warrants. *Carter*, 322 N.C. at 710, 370 S.E.2d at 554.

chopping block.[86] The worry was validated as the court overruled Carter in October 2025.[87]

While *King* may appear limited on its surface, a closer inspection reveals troubling trends from the Supreme Court of North Carolina. Criminal defense lawyers anxiously wait to see which of their clients' rights will be consumed by the majority's ever-expanding harmless error doctrine, while civil rights advocates wonder which state constitutional protection will be next on the court's chopping block. In the end, the majority is certainly right: "Like everyone else, judges make mistakes."[88] But one is left to wonder why the accused should bear the costs of those mistakes.

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86. *See* Petrey & Brook, *supra* note 78, at 22 ("Though firmly established as a constitutional decision over the decades, cracks—perhaps owing in part to the original construction—have emerged in recent years in the form of legislative calls for reconsideration as well as judicial avoidance of, or hostility to, its full force.").

87. Unfortunately, *Carter* was overruled during the editing process of this Case Brief. *See* State v. Rogers, No. 377PA22 , slip op. at 37, (N.C. Oct. 17, 2025) ("For all these reasons, *Carter* is expressly overruled."). That decision—for some—was a "pillar[]" of North Carolina state constitutional law. *See* MARK A. DAVIS, A WARREN COURT OF OUR OWN: THE EXUM COURT AND THE EXPANSION OF INDIVIDUAL RIGHTS IN NORTH CAROLINA 66 (2020). One should worry, then, that the court will set its sights on the remaining "pillar[]": *Corum* claims. It is difficult to say how much of a difference overruling *Corum* would actually make, though. *See generally* Mary Anneliese Childs, *The Decline of* Corum *Claims: How* Washington v. Cline *Limited Constitutional Protection for State Infringement of the Speedy Trial Right*, 103 N.C. L. REV. 1329 (2025) (explaining how the court greatly narrowed *Corum* claims last term).

88. *King*, 386 N.C. at 608, 906 S.E.2d at 814. Mr. King's case was plagued by error. In district court, the judge erroneously sentenced Mr. King to a seven-day split sentence. *Id.* at 602–03, 906 S.E.2d at 811. After filing a notice of appeal to superior court, the jail officials erroneously failed to release Mr. King. State v. King, 288 N.C. App. 459, 461, 886 S.E.2d 633, 635 (2023), *rev'd*, 386 N.C. 601, 906 S.E.2d 808 (2024). Following a jury trial in superior court, the judge erroneously found three aggravating factors for Mr. King's DWI conviction. *See King*, 386 N.C. at 605, 906 S.E.2d at 812. Even further, the court erroneously considered two of those factors because the State failed to provide notice to Mr. King. *See id.* at 617, 906 S.E.2d at 820 (Earls, J., dissenting). The same judge also erroneously sentenced Mr. King to thirty-six-months probation for his reckless driving conviction. *King*, 288 N.C. App. at 467, 886 S.E.2d at 638–39. The lack of accountability for the State's errors is all the more unsettling when compared to the consequences flowing from Mr. King's minor mistake in filing his notice of appeal. Despite filing a detailed, written notice of appeal, Mr. King lost his right of appeal because his lawyer did not give "oral notice of appeal at trial." *See* State's Response to Petition for Writ of Certiorari at 5, *King*, 288 N.C. App. 459, 886 S.E.2d 633 (No. COA22-469). And when Mr. King asked the court of appeals for discretionary review, the State opposed it. *Id.* at 6. To borrow the words of Justice Sotomayor, until cases like Mr. King's are eliminated from North Carolina courts, "our justice system will continue to be anything but." *Cf.* Utah v. Strieff, 579 U.S. 232, 254 (2016) (Sotomayor, J., dissenting) (highlighting the importance of parties who speak out against procedural misconduct and error as "canaries in the coal mine").

** J.D. Candidate, University of North Carolina School of Law, 2026.