No. 119PA18 TENTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

STATE OF NORTH CAROLINA	)	
	)	
v.	)	From Wake County
	)	
CHRISTOPHER B. SMITH	)	

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AMICUS CURIAE BRIEF
NORTH CAROLINA ADVOCATES FOR JUSTICE

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Pursuant to Rule 28(i) of the North Carolina Rules of Appellate Procedure, the North Carolina Advocates for Justice submits this brief as *amicus curiae* in support of Defendant Christopher B. Smith.[1]

INTRODUCTION

For centuries, those standing trial for alleged crimes have had the right under the common law to make a motion to the trial court challenging the sufficiency of the evidence. Such a motion "admits the truth of every fact that has been alleged, but denies the sufficiency of them all in point of law to maintain or overthrow the issue, which draws the question of law from the

[1] No person or entity other than North Carolina Advocates for Justice, its members, and its counsel, wrote this brief or contributed money for its preparation. N.C R. App. P. 28(i)(2).

cognizance of the jury, to be decided (as it ought) by the court." *State v. Moody*, 150 N.C. 847, 850, 64 S.E. 431, 432 (1909) (quoting Blackstone's *Commentaries*). North Carolina has always adhered to the rule that a *general* motion both raises and preserves for appellate review a challenge to every element of the charged offense. However, in keeping with their duties to provide effective assistance and in the hope of resolving issues at the trial court level, defense counsel across North Carolina frequently offer argument regarding particular elements of the crime. Neither the role of the general motion to dismiss nor the policy encouraging argument ought to be in dispute; both protect the constitutional rights of the accused and promote review of the substantive issues in criminal cases.

This case and its companion case *State v. Golder* reflect the damage that can be done to (1) constitutional rights, (2) sound public policy, and (3) judicial efficiency when appellate courts take a strict and formalistic approach to motions to dismiss. In *State v. Walker*, 252 N.C. App. 409, 798 S.E.2d 529 (2017), the Court of Appeals – relying on some of its own prior decisions – read the Rules of Appellate Procedure so as to hold that, despite the long-recognized breadth of a general motion to dismiss, "the specific reference to one element of the offense remove[s] the other elements of the offense from the trial court's consideration" and fails to preserve them for review. 252 N.C. App. at 412, 798 S.E.2d at 531. The constitutional

underpinnings of the traditional rule (Part I), the public policy that favors full review at trial and on appeal (Part II), and the negative implications the *Walker* rule would have for both attorneys and the criminal justice system (Part III) all weigh in favor of this Court rejecting the *Walker* rule and clarifying that offering arguments to the trial court will not serve to narrow or negate a defendant's general motion to dismiss for either trial or appellate review. We submit this brief in support of defendant Christopher B. Smith.

ARGUMENT

I. North Carolina's Longstanding Rule that a General Motion to Dismiss Challenges the Sufficiency of All Elements of the Challenged Offenses Serves to Protect the Constitutional Rights of Defendants.

As the Court of Appeals acknowledged, under North Carolina law "[a] general motion to dismiss requires the trial court to consider the sufficiency of the evidence on all elements of the challenged offenses, thereby preserving the arguments for appellate review." *State v. Smith*, COA17-680, ___ N.C. App. ___, slip op. at 5 (April 3, 2018) (quoting *State v. Walker*, *supra*). This rule was well established a century ago and has been regularly reaffirmed by this Court. *See, e.g., State v. Crockett*, 368 N.C. 717, 720, 782 S.E.2d 878, 881 (2016); *State v. Mann*, 355 N.C. 294, 301, 560 S.E.2d 776, 781 (2002); *State v. Powell*, 299 N.C. 95, 98, 261 S.E.2d 114, 117 (1980); *State v. Stephens*, 244 N.C. 380, 383, 93 S.E.2d 431, 433 (1956); *State v. Lawrence*, 196 N.C. 562,

581, 146 S.E. 395, 405 (1929); *State v. Pasour*, 183 N.C. 793, 794, 111 S.E. 779 (1922); *State v. Killian*, 173 N.C. 792, 794-95, 92 S.E. 499, 500 (1917); *Moody*, 150 N.C. at 850, 64 S.E. at 432. The rule is clear and it places the trial court and all parties on notice of the inquiry that must be made before the case can be submitted to the jury: "whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense." *Powell*, 299 N.C. at 98, 261 S.E.2d at 117.

This Court has recognized that federal due process requires that "the evidence in a criminal case, after it is viewed in the light most favorable to the prosecution, must be such that '*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *State v. Lynch*, 327 N.C. 210, 216, 393 S.E.2d 811, 814 (1990) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979)) (emphasis in original). The North Carolina Constitution also prohibits the State from imprisoning or depriving a person of "life, liberty, or property, but by the law of the land." N.C. Const. Art. I, § 19. The "law of the land" clause of the North Carolina Constitution incorporates "fundamental and sacred" principles of common law criminal jurisprudence, such as the prohibition on double jeopardy. *State v. Crocker*, 239 N.C. 446, 449, 80 S.E.2d 243, 245 (1954). This protection extends beyond procedure. Even legislative acts are not "laws of

the land" and may be struck down when they impose punishments without the safeguards of a "trial before the judicial tribunals, and a decision upon the matter of right, as determined by the laws under which it vested, according to the course, mode and usages of the common law." *Hoke v. Henderson*, 15 N.C. 1, 16 (1833). The ability to challenge the legal sufficiency of the State's evidence – in other words, to question whether the defendant could possibly be guilty of the crime charged under the law – is a similarly fundamental principle of criminal justice, and thus protected by Article I, § 19.

The *Walker* rule applied in this case and the companion case of *State v. Golder* imperils two fundamental rights of the accused in a criminal case: (1) the right to challenge the State on the legal sufficiency of its evidence and (2) the right to appellate review of that legal question. The North Carolina Constitution explicitly provides for appellate review and requires the General Assembly to "provide a proper system of appeals." N.C. Const. Art. IV, § 12(6). Appellate review is the law of the land. As such, federal due process and equal protection require that the State make its appellate system equally available to poor and wealthy defendants alike. *Griffin v. Illinois*, 351 U.S. 12, 76 S. Ct. 585 (1956). North Carolina's traditional rule that a general motion to dismiss places each element of the charged offense before the trial court for consideration – and thus before the appellate court for review –

provides all defendants with an accessible path through which to exercise their rights to challenge the sufficiency of the evidence at trial and on appeal.

The history of statutory enactments addressing motions to dismiss also supports amicus' position. The General Assembly believed that appellate review of the legal sufficiency of the evidence to sustain a criminal conviction was so important that it included two statutes providing for *automatic* review of this issue in the 1977 amendments to our criminal procedure statutes. An Act to Amend the Laws Relating to Criminal Procedure, Ch. 711, § 1, 1977 N.C. Sess. Laws 895; N.C.G.S. § 15A-1227(d); N.C.G.S. § 1446(d)(5). While this Court later invalidated those provisions to the extent they were inconsistent with Rule 10 of the North Carolina Rules of Appellate Procedure, which requires that a defendant make a motion in order to preserve the issue, *State v. Stocks*, 319 N.C. 437, 438-39, 355 S.E.2d 492, 492-93 (1987), the historical legislative commitment to protecting defendants' right to appellate review of sufficiency claims remains relevant. While the General Assembly exceeded its constitutional authority[2] in attempting to permit appellate review in every case regardless of whether a challenge was made in the trial court, the legislation (which, confusingly, remains on the books) reflects the legislature's intent that the fundamental question of whether the

[2] Under our Constitution, this Court retains "exclusive authority to make rules of practice and procedure for the Appellate Division." *State v. Elam*, 302 N.C. 157, 160, 273 S.E.2d 661, 664 (1981) (quoting N.C. Const. Art. IV, § 13(2)).

evidence was sufficient to sustain a conviction should receive merits review on direct appeal.

The *Walker* rule creates a real likelihood that criminal defendants will be deprived of merits review on the core question of guilt or innocence. Given the long history of preservation through general motions to dismiss in North Carolina, a new appellate rule under which defense counsel may negate a general motion to dismiss by arguing part of it constitutes a trap for not only the unwary, but also the weary and under-funded. The risk of maintaining the *Walker* rule will be not only the erosion of constitutional rights for criminal defendants, but the likely unequal erosion of those rights for indigent defendants who are represented by counsel with unequal access to time and resources.

II. Allowing the Waiver of Meritorious Claims Whenever Counsel Augments a General Motion to Dismiss with Argument Runs Counter to North Carolina Public Policy and Elevates Form Over Substance.

A simple preservation rule based on a general motion to dismiss comports with the public policy of North Carolina as expressed in our Constitution, the decisions of this Court, and the statutes and rules of procedure governing the practice of law in this State. As this Court observed midway through the last century:

> The law favors directness over indirectness; simplicity over complexity; brevity over prolixity; clarity over obscurity;

> substance over form. There is no virtue in the long phrase when a short one will do just as well. The courtroom is not the home of redundancy or circumlocution. Conciseness is the keynote there.

State v. Armstrong, 232 N.C. 727, 729, 62 S.E.2d 50, 51 (1950). North Carolina showed its preference for substance over form as early as 1868, when we "joined the trend of progressive states and merged [suits at law and in equity] into a single form of civil action." John V. Orth & Paul Martin Newby, *The North Carolina State Constitution* 137 (2d ed. 2013). The same section of our Constitution that merges the civil actions also declares that "[n]o rule of procedure or practice shall abridge substantive rights." N.C. Const. Art. IV, § 13(2). Consistent with these constitutional directives, the courts and the General Assembly have pursued a policy of simplicity and substance, coupled with an avoidance of formalism and technicalities that might prevent the review of genuine issues.

A. Indictments and Notice Pleading

One example of an area of the criminal law in which this Court and the Court of Appeals have consistently moved toward greater simplicity concerns criminal indictments. This Court has long taken the approach that criminal indictments should not "bind the hands of the state with technical rules of pleading." *State v. Sturdivant*, 304 N.C. 293, 311, 283 S.E.2d 719, 731 (1981) (citing *State v. Gregory*, 223 N.C. 415, 27 S.E.2d 140 (1943)). Instead, they

serve "to identify clearly the crime being charged, thereby putting the accused on reasonable notice to defend against it and prepare for trial, and to protect the accused from being jeopardized by the State more than once for the same crime." *Id.*

Thus, for example, an indictment for obtaining property by false pretenses may be sufficient without alleging the amount of money obtained. *State v. Mostafavi*, 370 N.C. 681, 811 S.E.2d 138 (2018). In the complex realm of controlled substances, an indictment has been held valid although it did not identify where the chemical substance allegedly fit within the lengthy definitions of N.C.G.S. § 90-98 (Schedule I). *State v. Williams*, 242 N.C. App. 361, 369-70, 774 S.E.2d 880, 886-87 (2015), *disc. rev. denied*, 369 N.C. 754, 799 S.E.2d 624 (2017). This Court has recently held that even the absence of the word "murder" in the short-form murder indictment does not render that indictment defective to charge the crime of murder when the element of "malice aforethought" appears. *State v. Tart*, 372 N.C. 73, 76-79, 824 S.E.2d 837, 839-41 (2019). It would work a particular injustice if those accused of crimes were subject to prosecution due to the judicially-endorsed erosion of formalism in indictments but denied review of their case because of a senseless and formalistic rule dictating the magic words to be uttered in moving to dismiss at the close of evidence.

Likewise, in civil actions, this State has adhered to the concept of notice pleading and avoided a heightened "plausibility" standard found in federal decisions. *See Holleman v. Aiken*, 193 N.C. App. 484, 490-91, 668 S.E.2d 579, 584-85 (2008) (declining to adopt *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955 (2007), and noting that the North Carolina Supreme Court had not done so); *see also Sutton v. Duke*, 277 N.C. 94, 100, 176 S.E.2d 161, 164 (1970) (holding that N.C. R. Civ. P. 8, while requiring more detail that its federal counterpart, adopted the concept of notice pleading). "Under notice pleading, 'a statement of claim is adequate if it gives sufficient notice of the claim asserted to enable the adverse party to answer and prepare for trial, to allow for the application of the doctrine of *res judicata*, and to show the type of case brought.'" *Wake County v. Hotels.com, L.P.*, 235 N.C. App. 633, 646, 762 S.E.2d 477, 486 (2014) (quoting *Sutton v. Duke*, 277 N.C. 94, 102, 176 S.E.2d 161, 165 (1970)); *see also* N.C. R. Civ. P. 8(a)(1). Like the State when it brings an indictment, civil litigants have the benefit of a policy that favors substance over form in their complaints. Indeed, the modern North Carolina Rules of Civil Procedure were premised on the philosophy that "[t]echnicalities and form are to be disregarded in favor of the merits of the case." James E. Sizemore, *General Scope and Philosophy of the New Rules*, 5 Wake Forest Intra. L. Rev. 1, 6 (1969).

A general motion to dismiss coupled with argument on particular points serves the policy interest in avoiding excessive formalism and favoring review on the merits no less than indictments or notice pleading. When defense counsel moves to dismiss and offers additional argument, the defendant provides the trial court with notice that the defendant challenges the legal sufficiency of every element of the charged offense and allows the State an informed opportunity to respond. The *Walker* rule, which would require defense counsel to deploy magic words to avoid losing the benefit of a general motion to dismiss, runs directly counter to public policy. The *Walker* rule encourages formalism and decreases the opportunity for review of the substance of arguments that the defendant may not be guilty of the crime charged. There is a fundamental injustice in denying to criminal defendants the benefit of a broadly held public policy that works to the benefit of both prosecutors and civil litigants.

B. Assignments of Error

The *Walker* rule has led to arbitrary results and barriers to review reminiscent of the era of strict technical standards for assignments of error in the Record on Appeal, and this Court's actions in that context suggest two paths to resolution of the issue at hand: a corrective opinion and an amendment to the appellate rules. For decades, strict requirements for the form of assignments of error led to inconsistent and arbitrary access to

appellate review. *See Broderick v. Broderick*, 175 N.C. App. 501, 506-08, 623 S.E.2d 806, 809-10 (2006) (Wynn, J., concurring). Ultimately, this Court issued a decision reaffirming the importance of review on the merits, rejecting a string of Court of Appeals decisions that denied review based on a highly technical reading of the requirement. *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 200, 657 S.E.2d 361, 366 (2008). The following year, this Court exercised its authority under N.C. Const. Art. IV, § 13(2) to amend the appellate rules to eliminate assignments of error and clarify that failure to include an issue in the proposed record does not limit the scope of issues presented on appeal. N.C. R. App. P. 10(b). This more flexible rule recognizes the value of access to justice.

While assignments of error did not raise the question of preservation at the trial level, the same patterns of arbitrary results and barriers to review have arisen regarding motions to dismiss for insufficiency of the evidence. And the same values – including the consistent application of procedural rules and the importance of review on the merits – apply in this context and warrant a similar response. This Court has the authority to use both a decision in this case and, if this Court should deem it necessary, a clarifying amendment to the Rules of Appellate Procedure to reaffirm that a defendant does not waive appellate review of the sufficiency of any element of the crime

charged simply by augmenting a general motion to dismiss with argument on a particular issue.

III. A Straightforward Rule on Preservation Promotes Judicial Efficiency and Avoids Arbitrary and Unequal Outcomes.

A simple rule that a general motion to dismiss preserves all sufficiency of the evidence claims and is not narrowed by the addition of arguments will promote greater judicial efficiency and remedy any current confusion as to the application of Rule 10(a)(3). It will promote review of fundamental issues of guilt and innocence at the earliest opportunity and avoid the arbitrary and unequal results likely to occur when the issue can only be addressed through discretionary mechanisms or post-conviction motions that require a higher burden.

A. The Walker Rule Leads to Unnecessary Additional Trial and Appellate Process on a Fundamental Question.

The current technical reading of Rule 10 by the Court of Appeals risks dismissing meritorious claims and creating additional trial and appellate processes. To deny review of the sufficiency of the evidence as to every element of the charge on appeal necessarily means a defendant's only recourse is to pursue a post-conviction motion for appropriate relief raising

the issue in an ineffective assistance of counsel claim.[3] The technical rule applied by the Court of Appeals in this case and *Golder* is likely to lead to the expenditure of additional, unnecessary trial and appellate resources to review fundamental issues.

A motion for appropriate relief raising ineffective assistance can generally only be made *after* all other appeals have been exhausted and final judgment has been entered. *See* N.C. Gen. Stat. § 15A–1415 (2019). Defendants who pursue a motion for appropriate relief often proceed *pro se*, as there is no statutory right to counsel in those proceedings absent an order of the court. Motions for appropriate relief require a defendant to fully brief the issues and move for an evidentiary hearing on his or her claims. *See* N.C. Gen. Stat. § 15A–1420 (2019). If an evidentiary hearing is granted, there will be a full hearing. If it is denied, the defendant can appeal by way of a petition for certiorari, placing further review in the discretion of the Court of Appeals and potentially triggering the entire appeals process for the second time. *See* N.C. Gen. Stat. § 15A–1422.

Forcing defendants who moved for dismissal at trial to pursue the post-conviction relief avenue for appellate review of the sufficiency of the evidence creates unnecessary judicial process. Allowing review on direct appeal

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[3] "In general, claims of ineffective assistance of counsel should be considered through motions for appropriate relief and not on direct appeal." *State v. Stroud*, 147 N.C. App. 549, 553, 557 S.E.2d 544, 547 (2001).

promotes judicial efficiency, because it eliminates the possibility of a motion for appropriate relief on the same issue and the additional trial and appellate resources and procedures that accompany that process. Furthermore, a post-conviction ineffective assistance of counsel claim must meet a drastically higher standard than a direct appeal, creating fundamentally unequal access to justice. *See State v. Braswell*, 312 N.C. 553, 563, 324 S.E.2d 241, 248 (1985) (under the *Strickland v. Washington* standard for ineffective assistance claims, "even an unreasonable error[] does not warrant reversal of a conviction unless there is a reasonable probability that, but for counsel's errors, there would have been a different result in the proceedings"). These claims can also take considerably longer than direct appeals, and may involve multiple trips to the trial and appellate courts. *See, e.g.*, *State v. Todd*, 369 N.C. 707, 799 S.E.2d 834 (2017) (remanding case to the trial court for further findings of fact on claim of ineffective assistance of appellate counsel, where case had previously gone through direct appeal, a post-conviction motion, and further review in both appellate courts).

B. A Simple Rule Is Appropriate Because It Will Not Incentivize Defendants to Hide Meritorious Claims When Moving to Dismiss at Trial.

Procedural questions often have consequences for substantive matters, and in that regard this issue is no different. The criminal justice system is specifically designed to punish only those who have committed crimes and

who have been proven to have committed these crimes by sufficient evidence – beyond a reasonable doubt. The manner in which the question of sufficiency of the evidence is preserved draws into question this promise of the criminal justice system.

Unlike many other policy issues, however, the adoption of a broad preservation rule carries very little risk that it will unfairly advantage criminal defendants. A case from the Wisconsin Supreme Court assessed precisely this issue, and its analysis carries persuasive value for the question before this Court.

In *State v. Hayes*, 681 N.W.2d 203 (Wis. 2004), the Wisconsin Supreme Court addressed both the interpretation and the policy consequences of a state statute providing for automatic review of sufficiency claims before finding that the law preserved such claims as a matter of law.[4] The State argued that a rule of automatic preservation would allow defense attorneys to "sandbag" the issues by intentionally not raising sufficiency arguments at trial for strategic purposes and raising them on appeal. *Id.* at 211. The Wisconsin Supreme Court disagreed:

> [T]he possibility of "sandbagging" is minimal. After an accused has been found guilty and convicted, he or she has the burden to

[4] As noted above, North Carolina has statutes still on the books that appear to preserve review of sufficiency of the evidence as of right. *See* N.C. Gen. Stat. §§ 15A-1227, 15A-1446(d)(5). In Wisconsin, unlike in our state, a similar law, Wis. Stat. § 974.02(2), is enforceable.

> prove that no reasonable jury could have come to the conclusion that it did. This burden is heavy, and appellate courts give great deference to jury verdicts. It is therefore unlikely that an accused or defense counsel will try to sandbag the State and the circuit court rather than make the proper objections and motions during trial.

Id. at 214. The fundamental considerations of justice on the other side also vastly outweighed any sandbagging arguments in opposition to the statutory rule. The Wisconsin court recognized that a claim that evidence was insufficient to support a conviction "presents a very serious issue in the administration of justice." *Id*. at 212. "If the claim [of insufficient evidence] can be proved but is deemed waived, a person whom the State has not proved guilty beyond a reasonable doubt would remain incarcerated." *Id*.

The Wisconsin Supreme Court noted that other "courts conclude that the potential miscarriage of justice resulting from a conviction based on insufficient evidence is so great as to justify review even when the issue was not raised in the trial court." *Hayes*, 681 N.W.2d at 212; *see, e.g., Commonwealth v. McGovern*, 397 Mass. 863, 494 N.E.2d 1298, 1300-01 (1986) ("[T]he defendant did not move for required findings of not guilty. However, findings based on legally insufficient evidence are inherently serious enough to create a substantial risk of a miscarriage of justice."); *State v. Miller*, 2004 Tenn. Crim. App. LEXIS 32, 2004 WL 115374, at *2 (Tenn. Crim. App. 2004) (court addressed sufficiency of evidence in the "interest of

justice" despite waiver). These decisions and the universal policy considerations they embody counsel in favor of a rule that encourages appellate review of all claims of insufficiency on direct appeal whenever the issue has been raised. The balance of the interests of justice against concerns of tactical advantage is no different in North Carolina than in other states, and this Court should adopt an interpretation of its rules that aligns with those interests.

The policy concerns cited by the Court of Appeals below, that defense counsel will omit arguments to engage in "horse-swapping" at the appellate level, are unpersuasive. Convictions based on sufficient evidence are of the utmost constitutional importance and are deeply rooted in our state's public policy. A defendant gains no advantage by pocketing an argument that would avoid a conviction in order to remain in prison while litigating it in the appellate courts or in post-conviction. The recent technical reading of Rule 10(a)(3) employed by the Court of Appeals creates arbitrary and fundamentally unjust outcomes that can be easily avoided.

C. *Rule 2 Is Not a Sufficient Safeguard.*

Rule 2 of the Rules of Appellate Procedure states that "[t]o prevent manifest injustice to a party, or to expedite decision in the public interest, either court of the appellate division may, except as otherwise expressly provided by these rules, suspend or vary the requirements or provisions of

any of these rules in a case pending before it upon application of a party or upon its own initiative, and may order proceedings in accordance with its directions." N.C. R. App. P. 2. The crux of this rule is that it is applied entirely within the discretion of the appellate courts, often leading to arbitrary and inconsistent results. Certainly, a court may elect to review a sufficiency of the evidence claim, even *sua sponte*, after undergoing the appropriate Rule 2 inquiry. *See State v. Booher*, 305 N.C. 554, 564, 290 S.E.2d 561, 566 (1992); *State v. Cox*, 281 N.C. 131, 135, 187 S.E.2d 785, 788 (1972). However, the fact that the appellate courts may choose to address some claims of insufficiency by invoking Rule 2 provides no certainty that an appellate court will consistently reach the merits of this fundamental issue. The analysis required can be complex and can lead to multiple appellate decisions. *See State v. Campbell,* ___ N.C. App. ___, 810 S.E.2d 803, *disc. rev. granted,* 371 N.C. 343, 813 S.E.2d 849 (2018). A straightforward rule on the preservation of sufficiency claims will eliminate the need for appellate courts to discretionarily invoke Rule 2 and the required additional layer of analysis.

CONCLUSION

As noted at the outset, neither the consistent rule that a general motion to dismiss preserves claims as to all elements nor the benefits of having arguments from counsel are in dispute. This Court should provide clarity in the rules, enforce constitutional rights, and promote equal access to

justice by overruling the Court of Appeals' stringent reading of Rule 10 and holding that the question of sufficiency of the evidence was preserved in this case.

Respectfully submitted, this the 10th day of July, 2019.

NORTH CAROLINA ADVOCATES FOR JUSTICE

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N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Brief of Amicus Curiae North Carolina Advocates for Justice has been duly served by sending it first-class mail, postage prepaid, to:

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This the 10th day of July, 2019.

By Electronic Submission:
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