

COURT OF APPEALS OF NORTH CAROLINA

State v. Phillips

No. COA25-275 · No. COA25-275 · Decided January 7, 2026

SUMMARY

The North Carolina Court of Appeals affirmed Earl Mitchell Phillips’s convictions for assault with a firearm on a law enforcement officer, stalking with a court order in effect, and resisting a public officer. The court held that the stalking indictment sufficiently identified the charged offense and that Phillips failed to show prejudice from any alleged deficiency. The court also held that the evidence did not support including the “without justification or excuse” language in the assault jury instruction.

CASE DETAILS

COURT	Court of Appeals of North Carolina
WRITING FOR THE COURT	Allegra Collins; Gore; Stading
JURISDICTION	North Carolina Court of Appeals
DECIDED	January 7, 2026
DOCKET	COA25-275
DISPOSITION	other
PROCEDURAL POSTURE	Defendant appealed from judgments entered after a jury convicted him of assault with a firearm on a law enforcement officer, felony stalking with a court order in effect, and resisting a public officer.
STANDARD OF REVIEW	De novo review applies to the denial of a motion to dismiss based on a fatal defect in an indictment and to a trial court’s decision regarding a requested jury instruction.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Earl Mitchell Phillips v. State of North Carolina

TOPICS

- criminal procedure
- jury instructions
- appellate procedure
- standard of review
- preservation of error

PRACTICE AREAS

- criminal law
- criminal procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the stalking indictment was fatally defective because it failed to provide a plain and concise factual statement sufficient to identify the charged conduct and give Defendant adequate notice.
2. Whether the trial court erred by refusing to include the parenthetical jury-instruction language 'and without justification or excuse' for the charge of assault with a firearm on a law enforcement officer.

HOLDINGS

1. The indictment sufficiently identified the stalking offense and gave Defendant adequate notice of the conduct charged; the trial court therefore properly denied the motion to dismiss.
2. The trial court did not err by refusing to include the requested parenthetical language because Defendant presented no affirmative defense and no evidence supporting involuntariness, justification, or excuse.

KEY QUOTATIONS

“An indictment must include a “plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of a criminal offense and the defendant’s commission thereof” and does so “with sufficient precision clearly to apprise the defendant . . . of the conduct which is the subject of the accusation.”” (at 8)

“A trial court must give a requested jury instruction only if it is “correct in itself and supported by [the] evidence[.]”” (at 10)

FACTUAL BACKGROUND

Defendant was subject to an eighteen-month no-contact order prohibiting contact with Christopher and Jaime Berghout and restricting his presence near their residence. In February 2023, Defendant repeatedly drove slowly past the Berghouts' home, and on February 11 Christopher reported hearing gunshots and seeing Defendant in his backyard. Deputies responding to the report found Defendant in his truck; after Deputy Wood identified himself, Defendant pointed a revolver at him, slowly lowered it only after repeated commands, and resisted removal and arrest.

PROCEDURAL HISTORY

Defendant was indicted in Haywood County Superior Court on March 6, 2023. The trial court denied his pretrial motion to dismiss the stalking indictment, denied motions to dismiss at the close of the State's evidence and at the close of all evidence, and refused his requested jury-instruction language concerning justification or excuse. A jury convicted Defendant on all charges on July 10, 2024; the court imposed consecutive sentencing treatment through two judgments, and Defendant appealed.

DISPOSITION

other

CASES CITED

- State v. Stewart, 386 N.C. 237, 240 (2024)
- State v. Williams, 362 N.C. 628, 632-33 (2008)
- State v. Creason, 313 N.C. 122, 130 (1985)
- State v. Coker, 312 N.C. 432, 435 (1984)
- State v. James, 321 N.C. 676, 680-81 (1988)
- State v. Singleton, 386 N.C. 183, 184-85, 210 (2024)
- State v. Duncan, 30 N.C. App. 112, 114 (1976)
- State v. Brown, 320 N.C. 179, 192 (1987)
- State v. McGee, 234 N.C. App. 285, 287 (2014)
- State v. Castenada, 196 N.C. App. 109, 116 (2009)
- State v. Shaw, 322 N.C. 797, 803 (1988)
- State v. Locklear, 363 N.C. 438, 464 (2009)
- State v. Mash, 323 N.C. 339, 348 (1988)
- State v. Hageman, 307 N.C. 1, 27 (1982)

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