

NORTH CAROLINA COURT OF APPEALS

State v. Dade

No. COA25-721 · No. COA25-721 · Decided June 3, 2026

SUMMARY

The North Carolina Court of Appeals held that the superior court lacked subject matter jurisdiction to conduct a de novo suppression hearing because the district court had not entered the written preliminary determination required by N.C.G.S. § 20-38.6(f), and the State’s appeal of only a verbal ruling was improper. The court vacated the superior court’s suppression order, rescinded the defendant’s guilty-plea agreement based on mutual mistake concerning appellate rights, and remanded for entry of a written preliminary determination. Chief Judge Dillon dissented, agreeing that certiorari should issue but would have affirmed the conviction subject to review of the suppression ruling.

CASE DETAILS

COURT	North Carolina Court of Appeals
WRITING FOR THE COURT	Judge John Arrowood; Judge Jeff Carpenter; Chief Judge Chris Dillon
JURISDICTION	North Carolina Court of Appeals
DECIDED	June 3, 2026
DOCKET	COA25-721
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed from a superior-court judgment entered after his guilty plea to driving while impaired, reserving the right to appeal the denial of his motion to suppress. Because the district court had issued only a verbal suppression ruling and no written preliminary determination or final order, defendant also petitioned for a writ of certiorari.
STANDARD OF REVIEW	Subject-matter jurisdiction was reviewed de novo. The court also applied de novo review to the question whether the superior court had jurisdiction to issue the challenged suppression order.
PRECEDENTIAL VALUE	Published precedential opinion; the majority opinion is binding North Carolina Court of Appeals authority subject to higher-court review.
PARTIES	Brandon Anthony Dade v. State of North Carolina

TOPICS

criminal procedure

suppression of evidence

appellate jurisdiction

writ of certiorari

fourth amendment

PRACTICE AREAS

criminal procedure

appellate procedure

constitutional law

plea bargaining

search and seizure

QUESTIONS PRESENTED

1. Whether the Court of Appeals had jurisdiction to review defendant's challenge to the superior court's suppression ruling when the district court had not entered a final suppression order.
2. Whether extraordinary circumstances warranted issuance of a writ of certiorari to review the superior court's interlocutory suppression order.
3. Whether the superior court acquired subject-matter jurisdiction from the State's appeal of the district court's verbal suppression ruling when the district court had not entered the written preliminary determination required by N.C.G.S. § 20-38.6(f).
4. Whether defendant's plea agreement should be rescinded when he pleaded guilty in detrimental reliance on a reserved right to appeal a suppression ruling that was later determined to be void.

HOLDINGS

1. Defendant had no statutory right to appeal the superior court's ruling because the district court never entered a final order denying the motion to suppress.
2. Extraordinary circumstances justified issuing a writ of certiorari to review defendant's jurisdictional challenge.
3. The superior court lacked subject-matter jurisdiction because the State appealed only a verbal suppression ruling rather than the written preliminary determination required by N.C.G.S. § 20-38.6(f), and the appeal did not identify a dispute over written factual findings.
4. The superior court's suppression order was null and void and had to be vacated in its entirety.
5. The plea agreement had to be rescinded because defendant pleaded guilty in detrimental reliance on a mutual mistake concerning his right to appeal the suppression ruling.

KEY QUOTATIONS

"Where the district court issues no such preliminary determination, the State has no statutory ability to properly appeal the verbal ruling." (p. 10)

"Subject matter jurisdiction is the indispensable foundation upon which valid judicial decisions rest, and in its absence a court has no power to act[.]" (p. 11)

"Therefore, we rescind defendant's plea agreement due to a mutual mistake of fact concerning defendant's right to appeal from this judgment." (p. 17)

"The district court must consider null and void all activity at district and superior court following the State's improper appeal of the initial ruling on defendant's motion to suppress." (p. 17)

FACTUAL BACKGROUND

Officer Neil O'Connor observed defendant's vehicle cross dividing lines and run a red light. After the vehicle stopped, the officer observed defendant's red eyes, blank stare, difficulty focusing and balancing, odor of alcohol, attempts to cover his mouth, and four unopened beer bottles in the back seat. Defendant refused field sobriety and breath tests, but a later laboratory report showed a blood-ethanol level of 0.12%.

PROCEDURAL HISTORY

The district court verbally granted defendant's motion to suppress. The State appealed that verbal ruling to superior court, which conducted a de novo hearing, found probable cause, reversed the suppression ruling, and remanded to district court. The district court did not enter the required final suppression order, but defendant later pleaded guilty in district court and then superior court under an agreement reserving his right to appeal. The Court of Appeals granted certiorari, held that the superior court lacked subject-matter jurisdiction, vacated its order, rescinded the plea agreement, and remanded for entry of the required written preliminary determination.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case is remanded to district court. The district court must treat all activity in district and superior court following the State's improper appeal as null and void, enter a written preliminary determination formalizing its initial decision on the suppression motion under N.C.G.S. § 20-38.6(f), and allow the State to determine whether it will appeal under N.C.G.S. § 20-38.7(a).

CASES CITED

- State v. Fowler, 197 N.C. App. 1, 11-12 (2009)
- State v. McBride, 120 N.C. App. 623, 624 (1995), aff'd, 344 N.C. 623 (1996)
- State v. Hutton, 244 N.C. App. 128, 129, 132-33 (2015)
- In re Snelgrove, 208 N.C. 670, 671-72 (1935)
- Cryan v. Nat'l Council of Young Men's Christian Ass'ns of U.S., 384 N.C. 569, 572-73 (2023)
- Moore v. Moody, 304 N.C. 719, 720 (1982)
- In re S.D.H., 296 N.C. App. 392 (2024)
- State v. Osterhoudt, 222 N.C. App. 620, 626 (2012)
- State v. Palmer, 197 N.C. App. 201 (2009)
- State v. Via, 197 N.C. App. 398 (2009)
- Burgess v. Gibbs, 262 N.C. 462, 465 (1964)
- High v. Pearce, 220 N.C. 266 (1941)
- State v. Colson, 274 N.C. 295, 306 (1968), cert. denied, 393 U.S. 1087 (1969)
- Lemmerman v. A.T. Williams Oil Co., 318 N.C. 577, 580 (1986)

- [case] Carpenter v. Carpenter, Carpenter v. Carpenter, 245 N.C. App. 1, 8 (2016)
- Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co., 362 N.C. 191, 198 (2008)
- Bailey v. State, 353 N.C. 142, 157 (2000)
- Harper v. City of Asheville, 160 N.C. App. 209, 213 (2003)
- State v. McCoy, 44 N.C. App. 516, 517 (1980)
- State v. Parisi, 251 N.C. App. 861, 865 (2017)
- State v. Dobson, 51 N.C. App. 445, 446 (1981)
- State v. Murrell, 54 N.C. App. 342, 343 (1981), disc. review denied, 304 N.C. 731 (1982)
- In re T.R.P., 360 N.C. 588, 590 (2006)
- State v. Earley, 24 N.C. App. 387, 389 (1975)
- In re Transp. of Juvs., 102 N.C. App. 806, 808 (1991)
- Hopkins v. Hopkins, 8 N.C. App. 162, 169 (1970)
- State v. Felmet, 302 N.C. 173, 176 (1981)
- Pruitt v. Wood, 199 N.C. 788, 790 (1930)
- Spence v. Tapscott, 92 N.C. 576, 578 (1885)
- Stafford v. Gallops, 123 N.C. 19 (1898)
- Roberts v. Swain, 126 N.C. App. 712, 719 (1997)
- State v. Harrell, 67 N.C. App. 57, 60 (1984)
- State v. McKinney, 361 N.C. 53, 58 (2006)
- State v. Tyson, 189 N.C. App. 408, 413-14 (2008)
- State v. Collins, 300 N.C. 142, 149 (1980)
- Santobello v. New York, 404 U.S. 257, 262 (1971)
- State v. King, 218 N.C. App. 384, 388 (2012)
- State v. Blackwell, 135 N.C. App. 729, 731-32 (1999)
- Lancaster v. Lancaster, 138 N.C. App. 459, 456 (2000)
- MacKay v. McIntosh, 270 N.C. 69, 73 (1967)