No. 119PA21 DISTRICT TWENTY-TWO (A)

SUPREME COURT OF NORTH CAROLINA

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STATE OF NORTH CAROLINA	)	
	)	
v.	)	From Iredell County
	)	
MADERKIS DEYAWN ROLLINSON	)	

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AMICUS CURIAE BRIEF OF PROFESSOR JOSEPH E. KENNEDY IN SUPPORT OF NEITHER PARTY

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INTEREST OF AMICUS CURIAE[1]

Amicus is a law professor at the University of North Carolina School of Law with nearly thirty years of teaching and writing experience in criminal procedure and policy. This expertise gives amicus a well-developed view of how appellate courts—especially at the state level, where most crimes are prosecuted—can shape criminal law doctrines and give clarity to practitioners, including judges, prosecutors, and defense attorneys.

[1] As permitted by 27 N.C. Admin. Code 1C.0207, counsel acknowledges the contributions of Adam C. Gillette, law student at the University of North Carolina School of Law, in researching and drafting this brief. Gillette is certified for student practice under 27 N.C. Admin. Code 1C.0201 *et seq*. and worked under direct supervision of counsel. No person or entity other than amicus or his counsel contributed money for the preparation of this brief.

Accordingly, amicus submits this brief to (1) emphasize that the right to trial by jury is a bedrock principle of constitutional law, (2) illuminate legislative efforts to safeguard this constitutional guarantee through the colloquy requirement in N.C.G.S. § 15A-1201(d), (3) urge this Court to grapple with error per se in its decision in the current controversy, and (4) suggest means of clarifying its error per se jurisprudence.

ARGUMENT

I. The right to a jury trial is a bedrock principle of both federal and North Carolina constitutional law, and waiver of this right is jealously guarded.

"It is a fundamental principle of the common law, declared in Magna Charta and incorporated in our Declaration of Rights, that '[n]o person shall be convicted of any crime but by the unanimous verdict of a jury in open court.'" *State v. Hudson*, 280 N.C. 74, 79 (1971) (quoting N.C. Const. Art. I, Sec. 24 (1971)). "[T]he jury system performs the critical governmental functions of guarding the rights of litigants and ensuring continued acceptance of the laws by all of the people." *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 624 (1991) (cleaned up).

Notwithstanding these important functions, by 2014, every state but North Carolina had statutes, procedural rules, or case law allowing for the waiver of a jury trial. *See* Jeffrey B. Welty & Komal K. Patel, *Understanding North Carolina's Proposed Constitutional Amendment Allowing Non-Jury*

Felony Trials 19–29 (UNC Sch. of Gov't 2014) ("Appendix B: Laws of Other American Jurisdictions") [hereinafter "Welty & Patel"].[2] There are good reasons for states to allow defendants to waive their right to a jury trial: such trials are long, expensive, and a drain on the state's judicial and civic resources. *Id.* at 4–5. Choosing bench trials can also make sense for defendants. For instance, a defendant might reason he or she has a better chance before a judge, as opposed to a jury, in cases involving particularly heinous or otherwise emotional allegations. *Id.* Defendants who "feel that [their] case[s] raise[] factual and legal issues too complex for a jury" may also benefit from a bench trial. Adam H. Kurland, *Providing a Federal Criminal Defendant with a Unilateral Right to a Bench Trial: A Renewed Call to Amend Federal Rule of Criminal Procedure 23(a)*, 26 U.C. Davis L. Rev. 309, 312 (1993).

But because "the jury as a fact-finding body in criminal cases" has such an important "place in our traditions," a defendant's right to trial by jury must be "jealously preserved." *Patton v. United States*, 281 U.S. 276, 312 (1930). No matter his or her reason for doing so, a defendant's choice to waive the right to a jury trial, "like the waiver of all constitutional rights, must be knowing and voluntary." *State v. Thacker*, 301 N.C. 348, 354 (1980).

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[2] Available at https://www.sog.unc.edu/sites/default/files/reports/nonjuryfelonytrials.pdf. For ease of reading, all links associated with citations are presented in footnotes.

II. To safeguard the right to a jury trial, the North Carolina legislature enacted the colloquy requirement in N.C.G.S. § 15A-1201(d).

In 2014, the voters of North Carolina approved a constitutional amendment permitting non-capital defendants to waive their constitutional right to a jury trial. An Act to Amend the Constitution—Waiver of Right to Trial by Jury, 2013 N.C. Laws S.L. 2013-300. Critically, the amendment provided that the jury trial waiver was "subject to procedures prescribed by the General Assembly." *Id.* at § 1. Initially, the legislature enacted a lightweight procedure through a provision passed alongside the amendment bill: the provision emphasized that the waiver must be "knowing[] and voluntary[]" and made clear that in the event of waiver, the full criminal matter would be heard by the trial judge upon the judge's consent. *Id.* at § 4.[3]

Just four months after North Carolina's jury waiver amendment took effect, North Carolinians asked the legislature to amend that process to better ensure defendants gave knowing and intelligent waivers. The North Carolina Courts Commission (NCCC), a non-standing committee of the General

[3] This narrower waiver process comported with the general practice in other states. Welty & Patel, at 8–10 (noting most states do not require a colloquy between the court and the defendant before consent to waiver). By adopting the colloquy provision discussed below, North Carolina's legislators quite intentionally adopted a variation on the more rigorous minority rule.

Assembly comprised of judges, legislators, attorneys, and legal laypersons,[4] submitted a report to the legislature recommending that "[t]he General Assembly should establish procedures for waiver of the right to a jury trial in criminal cases in Superior Court." N.C. Courts Comm'n, *Report to the 2015 Regular Session of the 2015 General Assembly*, March 2015, at 11.[5] In its report, NCCC offered language that would add procedural requirements to N.C.G.S. § 15A-1201, the section of the General Statutes that provided the jury waiver process. The Commission's suggested language mandated that before any jury waiver be allowed, defendants would have to give notice of intent through (1) a stipulation signed by both the State and the defendant, (2) filing of a written notice of intent to waive, or (3) giving notice of the intent to waive "on the record in open court" within a prescribed timeline. *Id.* at 23.

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[4] The NCCC was created in 1993 "to make continuing studies of the structure, organization, jurisdiction, procedures and personnel of the Judicial Department and of the General Court of Justice and to make recommendations to the General Assembly for such changes therein as will facilitate the administration of justice." N.C.G.S. § 7A-508. The Commission has twenty-eight members, seven appointed in equal number by the Governor, Speaker of the House of Representatives, President Pro Tempore of the Senate, and the Chief Justice of the state supreme court. The controlling statutes specify the specific mix of appointees to include judges, legislators, attorneys, and non-attorneys. N.C.G.S. § 7A-506.

[5] Available at https://www.ncleg.gov/documentsites/committees/BCCI-98/Meetings/2015-03-09/Courts%20Commission%20final%20report.pdf.

Though only some of NCCC's proposed statute would become law, the Commission's call for additional protections for jury waivers spurred the legislative activity that produced the colloquy requirement as we know it today. House Bill 215 (HB 215) was introduced in March 2015, putting forward the NCCC's proposed statutory changes. N.C. Gen. Assembly H. Judiciary III Minutes 2015-2016 Session at 239–241[6]; *see also* Procedure for Waiver of Jury Trial, N.C. Gen. Assembly 2015-2016 Session, HB 215 [hereinafter "HB 215 Legislative History"].[7] The bill moved quickly to the floor. In April 2015, the House passed a small amendment to the bill that would provide an additional safeguard: a defendant could revoke his waiver as a matter of right within ten days, without consent of the State or a judge. HB 215 Legislative History,[8] codified now as N.C.G.S. § 15A-1201(e).

Most of the protections in N.C.G.S. § 15A-1201 result from the work done on HB 215 by the Senate Judiciary Committee in the spring and summer of 2015. In the Committee's first meeting, representatives from both the

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[6] Available at https://www.ncleg.gov/documentsites/legislativepublications/Standing%20Committee%20Minutes%20-%20(1997%20-%20Current)/2015-2016%20Biennium/House/2015-2016%20-%20House%20Judiciary%203%20Minutes.pdf.

[7] Available at https://www.ncleg.gov/BillLookUp/2015/H215.

[8] *See* text of Amendment No. 2, available at https://webservices.ncleg.gov/ViewBillDocument/2015/2839/0/H215-A-NBC-839.

Conference of District Attorneys and North Carolina Advocates for Justice (NCAJ) spoke to explain the purpose of HB 215. They also expressed their shared "concerns" that the bill did not go far enough. One priority was preventing abuse of the waiver: defendants waiving a jury to receive a bench trial before a favorable judge, for example, or judges hastily proceeding to a bench trial despite an ambiguous waiver from a defendant. *See* N.C. Gen. Assembly S. Judiciary I Minutes 2015-2016 Session [hereinafter "Senate Judiciary Minutes"], at 527–29[9]; *see also* Welty & Patel, *supra*, at 5–7. In regard to the latter, the groups wanted requirements for waiver that would hold judges accountable for a decision to proceed to a bench trial. *See* Senate Judiciary Minutes at 527–29.

In direct response to these requests, the Committee developed and considered a new section, section (d), the foundation for the colloquy requirement in effect today. Most significantly, the new statutory language required that before consenting to the waiver, the judge would (1) "[a]ddress the defendant personally" to ensure the defendant understood the consequences of a waiver and (2) determine whether the defendant's request

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[9] Available at https://www.ncleg.gov/documentsites/legislativepublications/Standing%20Committee%20Minutes%20-%20(1997%20-%20Current)/2015-2016%20Biennium/Senate/2015-2016%20-%20Senate%20Judiciary%201%20Minutes.pdf.

to waive his trial was in good faith or instead a tactic to gain some "impermissible advantage." *Id.* at 598–600.

In Committee meetings through the summer of 2015, Senators and invited stakeholders discussed other ways to ensure the jury waiver process would be fair, reflective of good public policy, and constitutional. In one meeting, a district attorney voiced "support[] [for] the idea of efficiency in the courts and judicial consent," and approved generally of the new colloquy language because it would "ensure that a defendant is not coerced and is fully informed before making a decision [to waive his jury trial rights]." *Id.* at 575. Realizing the need to balance the interests of defendants, judges, attorneys, the Committee launched a subcommittee dedicated to working on the bill. *Id.* There, multiple speakers emphasized that whatever the new enacted waiver process might be, it should protect defendants from malfeasance or confusion and reduce the exercise of judicial discretion over the waiver. *Id.* at 657 (including a member of the Committee noting that the decision as to the "right of type of trial belongs to the defendant," not "the judge or district attorney").

Through the late summer and fall of 2015, the Senate and House negotiated the exact language and process to be enacted. *See* HB 215 Legislative History, entries for 30 July 2015 and 5 August 2015 (establishing a conferees' committee to reconcile the two chambers' bills). Critically, the colloquy requirement remained a part of the proposed language through all

drafts. *See*, e.g., Proposed S. Comm. Substitute H215-PCS30410-SA-86, N.C. Gen. Assembly 2015-2016 Session, HB 215.[10]

The final compromise version of the bill, offered in late September, maintained the requirement for the colloquy and judicial assessment of a defendant's knowing and intelligent waiver. The bill (1) required that defendants give notice of their intention to waiver; (2) required that judges, "[b]efore consenting to a defendant's waiver," conduct a colloquy through which they would "[a]ddress the defendant *personally*" to determine "whether the defendant fully understands and appreciates the consequences" of the waiver; (3) clarified the timeline and process for revocation of the waiver; and (4) added a process for suppression of evidence in the context of a bench trial. An Act to Establish Procedures for Waiver of the Right to a Jury Trial in Criminal Cases in Superior Court, S.L. 2015-289, § 1(c) (emphasis added). The bill passed and was signed into law in October 2015, *id.*, now codified as N.C.G.S. § 15A-1201(c)–(f).

These statutory changes satisfied the North Carolina Courts Commission's initial request that the General Assembly establish a clearer, mandatory process for waiver. And the changes responded to concerns raised

[10] Available at https://webservices.ncleg.gov/ViewBillDocument/2015/5837/0/H215-PCS30410-SA-86.

by defense attorneys, prosecutors, judges, and legislators during the legislative process that waiver be knowing and not the product of gamesmanship by any party.

III. In the current controversy, this Court should address whether North Carolina's error per se doctrine continues to operate independently of federal structural error jurisprudence and whether statutory violations can constitute error per se.

In North Carolina, alleged violations of a defendant's constitutional rights at trial are analyzed on appeal both for structural error and error per se, the latter of which is a specific kind of structural error developed in the North Carolina courts. That certain constitutional deprivations can constitute structural error is well-settled; this Court's recent decision in *State v. Hamer*, 377 N.C. 502 (2021), however, raises questions about how federal structural error and error per se interact as well as whether statutory violations can constitute error per se.

Historically, this Court has held that violations of statutes securing constitutional guarantees can constitute error per se. *State v. Hucks*, 323 N.C. 574 (1988); *State v. Mitchell,* 321 N.C. 650 (1988). Yet *Hamer* held that technical violations of the trial by jury colloquy requirement are analyzed for prejudice, perhaps even suggesting that error per se is inappropriate when assessing statutory violations. 377 N.C. at 508-09. The Court has the chance to clarify the law on point in this case.

A. *Though often overlapping with federal structural error jurisprudence, error per se is a North Carolina-specific doctrine that developed and has historically operated independently.*

As a general principle, the gravity of the error determines how it is assessed. Structural errors, those that effect "[t]he entire conduct of the trial from beginning to end[,]" *Hamer*, 377 N.C. at 506 (quoting *Arizona v. Fulminante*, 499 U.S. 279, 309 (1991)), require automatic reversal of the trial result without any showing of prejudice, *see, e.g., State v. Lawrence*, 365 N.C. 506, 513–14 (2012); *see also Weaver v. Massachusetts*, 137 S. Ct. 1899, 1907 (2017) ("The purpose of the structural error doctrine" is to "ensure insistence on certain basic, constitutional guarantees that should define the framework of any trial[.]"). By contrast, where a court finds "constitutional errors which in the setting of a particular case are so unimportant and insignificant that they may . . . be deemed harmless," the violations are evaluated for "harmless error," and courts will not grant a reversal of the trial result where they can "declare a belief that [any error was] harmless beyond a reasonable doubt." *Chapman v. California*, 386 U.S. 18, 22–24 (1967).

Consistent with our nation's system of federalism, states need not mechanically follow federal structural error jurisprudence. Indeed, "[s]tate courts . . . are free to interpret their own constitutions and laws to permit fewer applications of the harmless error rule than does the Federal Constitution." *Connecticut v. Johnson*, 460 U.S. 73, 81 n.9 (1983). State courts may arrive at

such interpretations by "read[ing their] own . . . constitution[s] more broadly than the federal one, or otherwise "reject[ing] the mode of analysis used" by the Supreme Court "in favor of a different analysis of [the] corresponding [state] constitutional guarantee." *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 293 (1982).

Error per se is, in essence, North Carolina's state constitution-specific structural error doctrine, developed through the process articulated above. *Hamer,* 377 N.C. at 515 (Ervin, J., dissenting) ("'[F]ederal structural error and state error per se have developed independently' in light of the fact that, while the question of whether a federal constitutional error is or is not harmless is a matter of federal law, the state courts are free to develop their own prejudice-related rules." (quoting *Lawrence*, 365 N.C. at 514)). Error per se not only developed independently, but this Court has interpreted it more expansively than federal structural error. For example, this Court has found error per se where: an alternate juror was substituted for an excused juror during the sentencing phase of a trial, after the original jury of twelve had returned a guilty verdict, *State v. Bunning*, 346 N.C. 253, 256 (1997); an alternate juror was present in the jury room during deliberations, possibly placing some improper, unknowable influence on the discussion, *State v. Bindyke*, 288 N.C. 608, 627 (1975); and where a verdict was returned by eleven jurors after the

twelfth fell sick, notwithstanding the defendant's consent to a verdict of eleven jurors, *Hudson*, 280 N.C. at 79.

In short, structural error and error per se are alike in purpose and effect: both seek to safeguard constitutional guarantees pertaining to trials by making certain deviations grounds for automatic reversal. But consistent with their independent development, federal structural error doctrine cannot dictate this Court's error per se assessment of violations implicating state constitutional rights.

B. *This Court has held that statutory violations can constitute error per se.*

Though state law codifies error per se, providing that "[p]rejudice . . . exists in any instance in which . . . error is deemed reversible per se," N.C.G.S. § 15A-1443(a), the contours of error per se are mostly shaped by case law. *See*, *e.g.*, *Bunning*, 346 N.C. 253; *Bindyke*, 288 N.C. 60; *Hudson*, 280 N.C. 74 (each finding error per se with respect to the composition or integrity of a jury). Essential here, this Court has held that statutory violations *can* constitute error per se. As the examples below show, this Court has applied error per se when (1) the statute in question eliminated judicial discretion or (2) its violation deprived the defendant of a substantial right.

In *Hucks*, 323 N.C. at 581, this Court vacated a defendant's conviction after the trial court allowed a capital case to proceed in violation of a statute.

An indigent defendant facing the death penalty is entitled to two attorneys by N.C.G.S. § 7A-450(b1). Hucks's co-defendant, General Miller, was only represented by a single attorney. The trial court put on the case without Miller being appointed assistant counsel, and he challenged his guilty verdict. *Hucks*, 323 N.C. 576–78. Though there is no *constitutional* right to two attorneys in capital cases, the court noted that "[the statute] is clearly mandatory, and its mandate is directed to the trial court" as a "legislative enactment[] of public policy which require[s] the trial court to act." *Id.* at 579–80. Rejecting the State's argument that the error was not prejudicial, the court "decline[d] to engage in any kind of harmless error analysis," rejecting "such speculation where . . . the legislature has chosen to remove that question from the discretion of the courts . . . ." *Id.* at 580. "[T]he failure to appoint additional counsel for the defendant . . . in a timely manner violated the [statutory] mandate" and thus "was prejudicial error per se." *Id.* at 581*; see also State v. Brown*, 325 N.C. 427, 428 (1989) (same).

Similarly, in *Mitchell,* 321 N.C. at 659, this Court reversed a capital conviction where the trial court had violated N.C.G.S. § 84-14 (1985).[11] This statute provides that, while no more than three attorneys may speak for a capital defendant during opening and closing arguments, the trial court is

[11] Now codified at N.C.G.S. § 7A-97.

otherwise forbidden from limiting those arguments, either in time or number of speakers. *See* N.C.G.S. § 84-14 (1985). In *Michell*, the trial court allowed only one of the defendant's two attorneys to address the jury during closing arguments at both the guilt and sentencing phases. 321 N.C. at 659. As in *Hucks,* this Court rejected the State's arguments that harmless error analysis should apply to this violation of a statutory dictate. *Id.*[12] Instead, because the deviation from the statute "deprived the defendant of a substantial right," *id.* (quoting *State v. Simpson,* 320 N.C. 313, 327 (1987)), it "constituted prejudicial error per se in both" phases of the trial. *Michell,* 321 N.C. at 659.

In these cases, the application of error per se did not turn on whether the defendant was deprived of a statutory guarantee. Instead of making statutory form dispositive, this Court looked to the nature of the deprivation.

C. *Hucks and Mitchell should factor into this Court's analysis of whether violation of the colloquy requirement is error per se.*

Hucks and *Mitchell* provide essential principles of North Carolina's error per se doctrine.[13] When the legislature has enacted a statute to protect a

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[12] The State's argument was based primarily on *State v. Eury,* 317 N.C. 511 (1986), where in a similar circumstance with respect to the limitation of a defendant's arguments, the court *did* apply harmless error analysis but nevertheless found prejudice on the specific facts. Presented with the issue again in *Mitchell,* the court announced a bright-line rule of error per se. 321 N.C. at 659.

[13] While both cases arise in the capital context, neither decision ever even suggests, let alone states, that its holding is specific to capital proceedings.

substantial right or rights, violations of that statute can constitute reversible error. That is especially true when the legislature history and statutory text make plain the intent to adopt a mandate. Because these principles so clearly implicate N.C.G.S. § 15A-1201(d) (emphasis added), a legislative mandate that "the trial judge *shall* . . . address the defendant *personally*" to assess whether the defendant is knowingly and voluntarily waiving his constitutional right to a jury, the Court's decision here should address how *Hucks* and *Mitchell* bear on its analysis.

Hamer only grappled with error with per se in passing. While acknowledging it, *Hamer* appeared to view error per se as an adjunct to the structural error jurisprudence developed by the Supreme Court of the United States. 377 N.C. at 506–07; *see also id.* at 515 (Ervin, J., dissenting) ("The majority's remedy-related discussion rests upon the application of the 'structural error' jurisprudence that has been developed by the Supreme Court of the United States."). Relatedly, *Hamer* seemed to suggest that error per se only applied to "certain violations of the North Carolina Constitution," *id.* at 507 (majority opinion), so deviation from the statutory colloquy requirement could not constitute error per se, *id.* ("The cases cited by defendant in support of his structural error argument relate to the make up and proper function of

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Instead, the pair provides general rules for the application of the error per se doctrine with respect to statutory violations.

the jury. While the deprivation of a properly functioning jury may be a constitutional violation, the failure of the trial court to conduct an inquiry pursuant to the procedures set forth in N.C.G.S. § 15A-1201(d) is a statutory violation."). In a footnote, the dissent rejected any such "suggestion . . . that error per se can only occur in connection with constitutional violations." *Id.* at 516 n.5 (Ervin, J., dissenting).

The current case offers this Court the opportunity to fill the doctrinal gap left by *Hamer*. Strict adherence to this Court's precedent requires asking whether the colloquy requirement imposes a mandate on the trial court, *Hucks*, 323 N.C. at 579–80, or implicates a "substantial right," *Mitchell*, 321 N.C. at 659 (citation omitted). As discussed below, however, there are other means of filling this gap.

IV. This Court should use this case to clarify its error per se jurisprudence; it has several options for doing so.

Again, the colloquy requirement constitutes a well-considered mandate to the trial court implicating a substantial, constitutional right. Such mandates have historically fallen within the ambit of error per se. Yet *Hamer* reviewed only for prejudice; indeed, the case could be read as suggesting error per se never applies to statutory violations. 377 N.C. at 507–08. Practitioners and judges are presently left to square this dissonant case law, which will inevitably lead to confusion and perhaps even inconsistent outcomes. To

reconcile *Hamer* as well as the current controversy with earlier case law, this Court could (1) overrule *Hucks*, *Mitchell,* and their progeny; (2) hold that violation of N.C.G.S. § 15A-1201(d) is error per se and overrule *Hamer*; or (3) distinguish the facts of the statutory violation here from that in *Hamer*.

The first option is to explicitly overrule *Hucks, Mitchell*, and their progeny. This Court could chart a new, clear course by making plain that *Hamer* sets a new rule trumping what came before.

The second option is the opposite side of the same coin: overruling *Hamer*. This Court could fault *Hamer* for failing to apply error per se in light of *Hucks*, *Mitchell*, and their progeny, which bear on the constitutional guarantee and statutory dictate at issue. Again, the clarifying benefit of such an approach is plain.

The final tenable option is to explicitly harmonize *Hucks*, *Mitchell*, and *Hamer*. One means of doing so is to distinguish between the "untimely" colloquy in *Hamer*, 377 N.C. at 509, and the lack of a colloquy here, T pp. 135–36. The Court could hold that, while the former represents only a "technical," *Hamer,* 377 N.C. at 508, or "procedural," *id.* at 509 (cleaned up), deviation from the process safeguarding a substantial right, this case represents a substantive deprivation, *Mitchell,* 321 N.C. at 659 (citation omitted). In the future, error per se would apply to violations of mandatory statutes that safeguard constitutional rights, but only when the violation substantively impairs the

protection. The benefit of this approach again is straightforward: it respects all of this Court's precedents.

While each approach provides benefits, none is beyond critique. As noted above, the first two options promote clarity in the law. But this Court "has never overruled its decisions lightly." *Rabon v. Rowan Mem'l Hosp., Inc.*, 269 N.C. 1, 20 (1967). Indeed, "[n]o court has been more faithful to Stare decisis." *Id.* The inverse is true of the final approach; harmonizing the case law hews closest to this Court's respect for precedent, but the line between technical and substantive violations will not always be as straightforward as it is here, and more confusion may loom in future application of such a decision. Still, each of these approaches would serve to clarify *Hamer*, which suggests, but never makes plain, significant change to our state's long-standing case law.

CONCLUSION

For these reasons, while taking no position as to the outcome, amicus respectfully requests that this Court clarify its error per se jurisprudence in its opinion deciding the current controversy.

Respectfully submitted, this 31st day of May, 2022.

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CERTIFICATE OF SERVICE

I certify that today, I caused the above document to be served on all counsel by email, addressed to:

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This the 31th day of May, 2022.

/s/ Christopher A. Brook
Christopher A. Brook