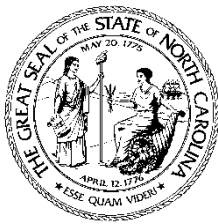


Press Packet – House Bill 393

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 - Specific attention to footnote number 5



PRESS RELEASE

REPRESENTATIVE CHAZ BEASLEY

North Carolina House of Representatives | House District 92

Contact: Michael Wilson – Beasleyla@ncleg.net | 919-733-5654

FOR IMMEDIATE RELEASE | March 19, 2019

Enclosed press packet includes: Press Release; Bill Summary; House Bill 393; List of Sponsors; Report from CMPD; and Summary of State v. Haddock III (specific attention to footnote 5)

Raleigh, NC – Today in the North Carolina House of Representatives, State Representatives Chaz Beasley (D - Mecklenburg), Jay Adams (R - Catawba), Gale Adcock (D - Wake), and Jamie Boles, Jr (R - Moore) introduced [House Bill 393 - Modernizing Sexual Assault Laws](#) to better protect children and young adults from assault, ensure more safe social settings, and modernize the language used in our sexual assault statutes.

The bill contains the following four sections which are explained in further detail in the enclosed Bill Summary:

- Clarify Definition For The Term Caretaker Used In Juvenile Code
- Prohibit The Knowing Distribution Of A Beverage That Contains Any Substance That Could Be Injurious To A Person's Health
- Amend The Definition Of The Term "Mentally Incapacitated"
- Modernizing Language Used In Certain Sex Offenses

The primary sponsors worked with the North Carolina Coalition Against Sexual Assault (NCCASA) to draft this bill. According to Skye David, the Staff Attorney at NCCASA, **"This legislation is critical to move the state forward in modernizing our rape statutes, making survivors feel heard, and ensuring safety for all North Carolinians. NCCASA is grateful to have a bipartisan bill that addresses current loopholes in the sexual assault statutes."**

This bill builds on the 2018 advocacy by Leah McGuirk, who came forward to tell her story of being drugged in a Charlotte nightclub. Leah contacted Representative Beasley in 2018 and worked with his office to close the loophole that prevented her case from being investigated by the Charlotte Mecklenburg Police Department. On June 13, 2018, the North Carolina House of Representatives passed [Amendment 1](#) to Senate Bill 768, which closed the loophole. Senate Bill 768 became law on June 22, 2018 when Governor Cooper signed it into law.

According to reporting by Alex Shabad at [WCNC News](#), Leah says she was drugged on May 12th 2018 at Rooftop 210 in the Epicenter in Uptown Charlotte. WCNC reports that McGuirk consumed one drink before becoming dizzy and nauseous and then falling on the floor.

McGuirk said **"This bill represents not only my voice but the voices of all drug-facilitated assault victims who for too long have remained silent due to shame. Thank you, Representatives Beasley, Adams, Adcock, and Boles for your collaboration. It is only through a spirit of bipartisan work that the collective good will continue to be upheld and promoted in North Carolina."**

According to the enclosed report from the Charlotte Mecklenburg Police Department there were 875 rapes and sex offenses reported to CMPD in 2018.

Representative Beasley said in a statement **"This bill is a critical step forward in modernizing our sexual assault laws. I'm proud that we've created a bill that will make our laws better reflect current realities and provide survivors with better access to justice. I'm particularly grateful to those who have shared their stories – without them, this bill would not have been possible."**

Representative Adams said in a statement **"Many years ago a very close family friend's daughter was a victim of the behavior this bill addresses. That personal experience was a strong motivator for me to support this legislation."**

Representative Adcock said in a statement: **"As a family nurse practitioner I believe it's critical to do all we can to protect individuals from sexual assault and to prosecute those who commit these crimes."**

The primary sponsors of this legislation are available for on camera comment upon request. Please contact Michael Wilson at 919-733-5654.

###

House Bill 393 Summary

House Bill 393 contains the following sections:

- Expanding Protections for Our Kids - Clarifies the definition of “Caretaker” in the Juvenile Code, holding adults who are dating a child’s parent responsible if that adult abuses their significant other’s child. This ensures that abusive adults cannot use the fact that they are not legally or biologically related to a child to stall abuse investigations.
- Making Drugging Someone’s Drink Illegal - Expands statutes on drugging or adulterating food to also include beverages. This makes it illegal to put dangerous drugs or substances into someone’s drink. To “roofie” a drink is the most common colloquial reference to this activity.
- Closing the Incapacitation Loophole - Prevents sexual assailants from taking advantage of people who are already in vulnerable mental states. In some cases, assailants can use the fact that they did not cause a victim’s incapacitation as a defense against sexually assaulting a victim thereafter. This allows law enforcement to better hold sexual assailants responsible for their assaults.
- Modernizing Statutory Language - Updates the language used about our laws to reflect current terminology. While this section does not lead to any substantive changes in what constitutes rape or sexual assault, it does make the language used in our justice system more consistent with today’s world.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H.B. 393
Mar 19, 2019
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH40175-ML-82

Short Title: Modernizing Sexual Assault Laws.

(Public)

Sponsors: Representatives Beasley, Adams, Adcock, and Boles (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED
AN ACT TO CLARIFY THE DEFINITION OF THE TERM "CARETAKER" USED IN THE
JUVENILE CODE TO INCLUDE AN ADULT IN A DATING OR ROMANTIC
RELATIONSHIP WITH THE PARENT, GUARDIAN, OR CUSTODIAN OF THE
JUVENILE; TO AMEND G.S. 14-401.11 TO ALSO PROHIBIT THE KNOWING
DISTRIBUTION OF A BEVERAGE THAT CONTAINS ANY SUBSTANCE THAT
COULD BE INJURIOUS TO A PERSON'S HEALTH; TO AMEND THE DEFINITION
FOR THE TERM "MENTALLY INCAPACITATED" USED IN ARTICLE 7B OF
CHAPTER 14 OF THE GENERAL STATUTES; AND TO MODERNIZE THE
LANGUAGE USED IN CERTAIN SEX OFFENSES.

The General Assembly of North Carolina enacts:

**CLARIFY DEFINITION OF THE TERM "CARETAKER" USED IN THE JUVENILE
CODE**

SECTION 1. G.S. 7B-101(3) reads as rewritten:

"(3) Caretaker. – Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a ~~stepparent~~, ~~stepparent~~, ~~foster parent~~, ~~parent~~, ~~parent~~; an adult member of the juvenile's ~~household~~, ~~household~~; an adult ~~relative~~ entrusted with the juvenile's care, which includes an adult in a dating or romantic relationship with the parent, guardian, or custodian of the juvenile; a potential adoptive parent during a visit or trial placement with a juvenile in the custody of a ~~department~~, ~~department~~; any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational ~~facility~~, ~~facility~~; or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of this Subchapter only."

**AMEND G.S. 14-401.11 TO PROHIBIT THE KNOWING DISTRIBUTION OF A
BEVERAGE THAT CONTAINS ANY SUBSTANCE THAT COULD BE INJURIOUS TO
A PERSON'S HEALTH**

SECTION 2. G.S. 14-401.11 reads as rewritten:



* D R H 4 0 1 7 5 - M L - 8 2 *

"§ 14-401.11. Distribution of certain food at ~~Halloween and all other times~~ or beverage prohibited.

(a) It shall be unlawful for any person to knowingly distribute, sell, give away or otherwise cause to be placed in a position of human ~~accessibility~~, accessibility or ingestion, any ~~food~~ food, beverage, or other eatable or drinkable substance which that person knows to ~~contain~~ contain any of the following:

- (1) Any noxious or deleterious substance, material or article which might be injurious to a person's health or might cause a person any physical ~~discomfort~~, or discomfort.
- (2) Any controlled substance included in any schedule of the Controlled Substances ~~Act~~, or Act.
- (3) Any poisonous chemical or compound or any foreign substance such as, but not limited to, razor blades, pins, and ground glass, which might cause death, serious physical injury or serious physical pain and discomfort.

(b) Penalties.

- (1) Any person violating the provisions of G.S. 14-401.11(a)(1):
 - a. Where the actual or possible effect on a person eating or drinking the food ~~food~~ food, beverage, or other substance was or would be limited to mild physical discomfort without any lasting effect, shall be guilty of a Class I felony.
 - b. Where the actual or possible effect on a person eating or drinking the food ~~food~~ food, beverage, or other substance was or would be greater than mild physical discomfort without any lasting effect, shall be punished as a Class H felon.
- (2) Any person violating the provisions of G.S. 14-401.11(a)(2) shall be punished as a Class F felon.
- (3) Any person violating the provisions of G.S. 14-401.11(a)(3) shall be punished as a Class C felon."

AMEND DEFINITION FOR THE TERM "MENTALLY INCAPACITATED" USED IN ARTICLE 7B OF CHAPTER 14 OF THE GENERAL STATUTES

SECTION 3. G.S. 14-27.20(2) reads as rewritten:

- "(2) Mentally incapacitated. – A victim who due to (i) any ~~act~~ act, whether committed upon the victim by a perpetrator or the victim or (ii) a poisonous or controlled substance provided to the victim without the knowledge or consent of the ~~victim~~ victim, is rendered substantially incapable of either appraising the nature of his or her conduct, or resisting the act of vaginal intercourse or a sexual act."

MODERNIZING THE LANGUAGE USED IN CERTAIN SEX OFFENSES

SECTION 4.(a) G.S. 14-27.21 reads as rewritten:

"§ 14-27.21. First-degree ~~forcible~~ rape.

(a) A person is guilty of first-degree ~~forcible~~ rape if the person engages in vaginal intercourse with another person by force and against the will of the other person, and does any of the following:

- (1) Uses, threatens to use, or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon.
- (2) Inflicts serious personal injury upon the victim or another person.
- (3) The person commits the offense aided and abetted by one or more other persons.

...."

SECTION 4.(b) G.S. 14-27.22 reads as rewritten:

"§ 14-27.22. Second-degree ~~foreible~~-rape.

(a) A person is guilty of second-degree ~~foreible~~-rape if the person engages in vaginal intercourse with another person:

- (1) By force and against the will of the other person; or
- (2) Who has a mental disability or who is mentally incapacitated or physically helpless, and the person performing the act knows or should reasonably know the other person has a mental disability or is mentally incapacitated or physically helpless.

...."

SECTION 4.(c) G.S. 14-27.26 reads as rewritten:

"§ 14-27.26. First-degree ~~foreible~~-sexual offense.

(a) A person is guilty of a first degree ~~foreible~~-sexual offense if the person engages in a sexual act with another person by force and against the will of the other person, and does any of the following:

- (1) Uses, threatens to use, or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon.
- (2) Inflicts serious personal injury upon the victim or another person.
- (3) The person commits the offense aided and abetted by one or more other persons.

...."

SECTION 4.(d) G.S. 14-27.27 reads as rewritten:

"§ 14-27.27. Second-degree ~~foreible~~-sexual offense.

(a) A person is guilty of second degree ~~foreible~~-sexual offense if the person engages in a sexual act with another person:

- (1) By force and against the will of the other person; or
- (2) Who has a mental disability or who is mentally incapacitated or physically helpless, and the person performing the act knows or should reasonably know that the other person has a mental disability or is mentally incapacitated or physically helpless.

...."

SECTION 4.(e) G.S. 7B-101(1)d. reads as rewritten:

"d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree ~~foreible~~ rape, as provided in G.S. 14-27.21; second-degree ~~foreible~~-rape as provided in G.S. 14-27.22; statutory rape of a child by an adult as provided in G.S. 14-27.23; first-degree statutory rape as provided in G.S. 14-27.24; first-degree ~~foreible~~-sex offense as provided in G.S. 14-27.26; second-degree ~~foreible~~-sex offense as provided in G.S. 14-27.27; statutory sexual offense with a child by an adult as provided in G.S. 14-27.28; first-degree statutory sexual offense as provided in G.S. 14-27.29; sexual activity by a substitute parent or custodian as provided in G.S. 14-27.31; sexual activity with a student as provided in G.S. 14-27.32; unlawful sale, surrender, or purchase of a minor, as provided in G.S. 14-43.14; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in

G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-205.3(b); and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1;"

SECTION 4.(f) G.S. 7B-1602(a) reads as rewritten:

"(a) When a juvenile is committed to the Division for placement in a youth development center for an offense that would be first degree murder pursuant to G.S. 14-17, first-degree ~~forcible~~-rape pursuant to G.S. 14-27.21, first-degree statutory rape pursuant to G.S. 14-27.24, first-degree ~~forcible~~-sexual offense pursuant to G.S. 14-27.26, or first-degree statutory sexual offense pursuant to G.S. 14-27.29 if committed by an adult, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 21 years, whichever occurs first."

SECTION 4.(g) G.S. 7B-2509 reads as rewritten:

"§ 7B-2509. Registration of certain delinquent juveniles.

In any case in which a juvenile, who was at least 11 years of age at the time of the offense, is adjudicated delinquent for committing a violation of G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.21 (first-degree ~~forcible~~-rape), G.S. 14-27.22 (second-degree ~~forcible~~-rape), G.S. 14-27.24 (first-degree statutory rape), G.S. 14-27.26 (first-degree ~~forcible~~-sexual offense), G.S. 14-27.27 (second-degree ~~forcible~~-sexual offense), or G.S. 14-27.29 (first-degree statutory sexual offense), the judge, upon a finding that the juvenile is a danger to the community, may order that the juvenile register in accordance with Part 4 of Article 27A of Chapter 14 of the General Statutes."

SECTION 4.(h) G.S. 7B-2513 reads as rewritten:

"§ 7B-2513. Commitment of delinquent juvenile to Division.

...

- (1) The twenty-first birthday of the juvenile if the juvenile has been committed to the Division for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree ~~forcible~~-rape pursuant to G.S. 14-27.21, first-degree statutory rape pursuant to G.S. 14-27.24, first-degree ~~forcible~~-sexual offense pursuant to G.S. 14-27.26, or first-degree statutory sexual offense pursuant to G.S. 14-27.29 if committed by an adult;

...

(a1) For an offense the juvenile committed prior to reaching the age of 16 years, the term shall not exceed:

- (1) The twenty-first birthday of the juvenile if the juvenile has been committed to the Division for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree ~~forcible~~-rape pursuant to G.S. 14-27.21, first-degree statutory rape pursuant to G.S. 14-27.24, first-degree ~~forcible~~-sexual offense pursuant to G.S. 14-27.26, or first-degree statutory sexual offense pursuant to G.S. 14-27.29 if committed by an adult;

...."

SECTION 4.(i) G.S. 7B-2514(c)(2) reads as rewritten:

- "(2) The juvenile's twenty-first birthday if the juvenile has been committed to the Division for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree ~~forcible~~-rape pursuant to G.S. 14-27.21, first-degree statutory rape pursuant to G.S. 14-27.24, first-degree ~~forcible~~-sexual offense

pursuant to G.S. 14-27.26, or first-degree statutory sexual offense pursuant to G.S. 14-27.29 if committed by an adult."

SECTION 4.(j) G.S. 7B-2516(c)(1) reads as rewritten:

"(1) The juvenile's twenty-first birthday if the juvenile has been committed to the Division for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree ~~forcible~~-rape pursuant to G.S. 14-27.21, first-degree statutory rape pursuant to G.S. 14-27.24, first-degree ~~forcible~~-sexual offense pursuant to G.S. 14-27.26, or first-degree statutory sexual offense pursuant to G.S. 14-27.29 if committed by an adult."

SECTION 4.(k) G.S. 7B-2600(c) reads as rewritten:

"(c) In any case where the court finds the juvenile to be delinquent or undisciplined, the jurisdiction of the court to modify any order or disposition made in the case shall continue (i) during the minority of the juvenile, (ii) until the juvenile reaches the age of 19 years if the juvenile has been adjudicated delinquent and committed to the Division for an offense that would be a Class B1, B2, C, D, or E felony if committed by an adult, other than an offense set forth in G.S. 7B-1602(a), (iii) until the juvenile reaches the age of 21 years if the juvenile has been adjudicated delinquent and committed for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree ~~forcible~~-rape pursuant to G.S. 14-27.21, first-degree statutory rape pursuant to G.S. 14-27.24, first-degree ~~forcible~~-sexual offense pursuant to G.S. 14-27.26, or first-degree statutory sexual offense pursuant to G.S. 14-27.29 if committed by an adult, or (iv) until terminated by order of the court."

SECTION 4.(l) G.S. 14-208.6(5) reads as rewritten:

"(5) Sexually violent offense. – A violation of former G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.21 (first-degree ~~forcible~~-rape), G.S. 14-27.22 (second-degree ~~forcible~~-rape), G.S. 14-27.23 (statutory rape of a child by an adult), G.S. 14-27.24 (first-degree statutory rape), G.S. 14-27.25(a) (statutory rape of a person who is 15 years of age or younger and where the defendant is at least six years older), G.S. 14-27.26 (first-degree ~~forcible~~-sexual offense), G.S. 14-27.27 (second-degree ~~forcible~~-sexual offense), G.S. 14-27.28 (statutory sexual offense with a child by an adult), G.S. 14-27.29 (first-degree statutory sexual offense), G.S. 14-27.30(a) (statutory sexual offense with a person who is 15 years of age or younger and where the defendant is at least six years older), G.S. 14-27.31 (sexual activity by a substitute parent or custodian), G.S. 14-27.32 (sexual activity with a student), G.S. 14-27.33 (sexual battery), G.S. 14-43.11 (human trafficking) if (i) the offense is committed against a minor who is less than 18 years of age or (ii) the offense is committed against any person with the intent that they be held in sexual servitude, G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-205.2(c) or (d) (patronizing a prostitute who is a minor or has a mental disability), G.S. 14-205.3(b) (promoting prostitution of a minor or a person who has a mental disability), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual

act upon a juvenile by parent or guardian). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 4.(m) G.S. 14-208.26(a) reads as rewritten:

"(a) When a juvenile is adjudicated delinquent for a violation of former G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.21 (first-degree ~~forcible~~ rape), G.S. 14-27.22 (second-degree ~~forcible~~ rape), G.S. 14-27.24 (first-degree statutory rape), G.S. 14-27.26 (first-degree ~~forcible~~ sexual offense), G.S. 14-27.27 (second-degree ~~forcible~~ sexual offense), or G.S. 14-27.29 (first-degree statutory sexual offense), and the juvenile was at least eleven years of age at the time of the commission of the offense, the court shall consider whether the juvenile is a danger to the community. If the court finds that the juvenile is a danger to the community, then the court shall consider whether the juvenile should be required to register with the county sheriff in accordance with this Part. The determination as to whether the juvenile is a danger to the community and whether the juvenile shall be ordered to register shall be made by the presiding judge at the dispositional hearing. If the judge rules that the juvenile is a danger to the community and that the juvenile shall register, then an order shall be entered requiring the juvenile to register. The court's findings regarding whether the juvenile is a danger to the community and whether the juvenile shall register shall be entered into the court record. No juvenile may be required to register under this Part unless the court first finds that the juvenile is a danger to the community."

SECTION 4.(n) G.S. 90-171.38(b) reads as rewritten:

"(b) Any individual, organization, association, corporation, or institution may establish a program for the purpose of training or educating any registered nurse licensed under G.S. 90-171.30, 90-171.32, or 90-171.33 in the skills, procedures, and techniques necessary to conduct examinations for the purpose of collecting evidence from the victims of first-degree ~~forcible~~ rape as defined in G.S. 14-27.21, second-degree ~~forcible~~ rape as defined in G.S. 14-27.22, statutory rape of a child by an adult as defined in G.S. 14-27.23, first-degree statutory rape as defined in G.S. 14-27.24, statutory rape of a person who is 15 years of age or younger as defined in G.S. 14-27.25, first-degree ~~forcible~~ sexual offense as defined in G.S. 14-27.26, second-degree ~~forcible~~ sexual offense as defined in G.S. 14-27.27, statutory sexual offense with a child by an adult as defined in G.S. 14-27.28, first-degree statutory sexual offense as defined in G.S. 14-27.29, statutory sexual offense with a person who is 15 years of age or younger as defined in G.S. 14-27.30, attempted first-degree or second-degree ~~forcible~~ rape, attempted first-degree statutory rape, attempted first-degree or second-degree ~~forcible~~ sexual offense, or attempted first-degree statutory sexual offense. The Board, pursuant to G.S. 90-171.23(b)(14), shall establish, revise, or repeal standards for any such program. Any individual, organization, association, corporation, or institution which desires to establish a program under this subsection shall apply to the Board and submit satisfactory evidence that it will meet the standards prescribed by the Board."

SECTION 4.(o) G.S. 143B-1200(i)(3) reads as rewritten:

"(3) Sexual assault. – Any of the following crimes:

- a. First-degree ~~forcible~~ rape as defined in G.S. 14-27.21.
- b. Second-degree ~~forcible~~ rape as defined in G.S. 14-27.22.
- c. First-degree statutory rape as defined in G.S. 14-27.24.
- d. Statutory rape of a person who is 15 years of age or younger as defined in G.S. 14-27.25.
- e. First-degree ~~forcible~~ sexual offense as defined in G.S. 14-27.26.
- f. Second-degree ~~forcible~~ sexual offense as defined in G.S. 14-27.27.
- g. First-degree statutory sexual offense as defined in G.S. 14-27.29.
- h. Statutory sexual offense with a person who is 15 years of age or younger as defined in G.S. 14-27.30."

1
2 **SAVINGS CLAUSE**

3 **SECTION 5.** Prosecutions for offenses committed before the effective date of this
4 act are not abated or affected by this act, and the statutes that would be applicable but for this act
5 remain applicable to those prosecutions.
6

7 **EFFECTIVE DATE**

8 **SECTION 6.** This act becomes effective December 1, 2019, and applies to offenses
9 committed on or after that date.

Primary Sponsors

[Beasley](#) - D - Mecklenburg

[Adams](#) - R - Catawba

[Adcock](#) - R - Wake

[Boles](#) - R - Moore

Cosponsors as of 12pm

An updated list of cosponsors can be found at: <https://www.ncleg.gov/BillLookup/2019/H393>

[Ager](#) - D - Buncombe

[Batch](#) - D - Wake

[Belk](#) - D - Mecklenburg

[Brockman](#) D - Guilford

[Clark](#) - D - Mecklenburg

[Clemmons](#) - D - Guilford

[Dahle](#) - D - Wake

[Fisher](#) - D - Buncombe

[Harris](#) - D - Mecklenburg

[Hunt](#) - D - Mecklenburg

[Harrison](#) D - Guilford

[Lofton](#) - D - Mecklenburg

[Lucas](#) - D - Cumberland

[McGrady](#) - R - Henderson

[Meyer](#) - D - Orange

[Potts](#) - R - Davidson

[Reives](#) - D - Chatham, Durham

[Riddell](#) - R - Alamance

[von Haefen](#) - D - Wake

[Yarborough](#) - R - Granville, Person

**Charlotte-Mecklenburg Police Department
2018 Reported Rapes and Sex Offenses**

	EpiCentre	All Rapes and Sex Offenses
Rapes	3	305
11A Forcible Rape	1	240
11B Forcible Sodomy	1	51
11C Sexual Assault With Object	1	14
Sex Offenses	2	570
11D Forcible Fondling	2	570
All Rapes and Sex Offenses	5	875

Reporting agency is CMPD. Unfounded excluded.

EpiCentre based on incident location at 210 E Trade St.

Counts the highest offense in the report. Not in official UCR/NIBRS format.

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STATE v. HADDOCK III

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Court of Appeals of North Carolina.

STATE of North Carolina, Plaintiff, v. Kinsey Chambers HADDOCK, III, Defendant.

No. COA07-1050.**Decided: August 05, 2008**

Attorney General Roy A. Cooper, III, by Special Deputy Attorney General Dorothy Powers, for the State. Wyatt Early Harris Wheeler LLP, by Stanley F. Hammer, High Point, for defendant-appellant.

Defendant Kinsey C. Haddock, III, appeals from judgment entered upon a jury verdict finding him guilty of second degree rape. The dispositive question presented by this case is whether, when a criminal defendant is tried for second degree rape on the theory of mental incapacitation, it is error for the trial court to fail to instruct the jury that it must find beyond a reasonable doubt that the victim's mental incapacitation was due to an act committed upon the victim. Because we conclude that it is, we reverse defendant's conviction and remand for a new trial.

I. Background

The evidence in the record tends to show the following: On 31 December 2005 defendant accompanied the victim (or "S.B.") as the designated driver while S.B. and her friends drank alcohol to celebrate New Year's Eve.

Defendant escorted S.B. to several bars and restaurants of her choice where she drank alcohol past midnight and into the early hours of the morning of 1 January 2006. Sometime between 2:00 a.m. and 4:00 a.m. on 1 January 2006, defendant, S.B., and S.B.'s friends, Krista Case and Joe Watkins went to Watkins' apartment. Watkins' roommate asked S.B. to leave the apartment around 4:00 or 5:00 a.m. because her drunken state had caused her to become loud and obnoxious. Defendant and S.B. left Watkins' apartment and went to defendant's apartment in Market Square Towers. S.B. testified at trial that she did not know where she was when she arrived at defendant's apartment and that she soon passed out from excessive drinking, falling asleep on defendant's bed. Defendant put on a condom and had intercourse with S.B. at around 6:00 a.m. on 1 January 2006.

After the act of intercourse, S.B. left defendant's apartment and went down to the lobby of the building, where she sprawled out on the floor in a "very intoxicated" state. Police officers were summoned to the lobby on account of defendant's intoxicated behavior, and they smelled alcohol as soon as they entered the lobby. S.B. was taken by ambulance to High Point Regional Hospital, where she was evaluated for possible injuries arising from excessive alcohol consumption and from sexual intercourse. She told a nurse at the hospital that she had not lost consciousness during the night.

Later that morning, police officers went upstairs to defendant's apartment and questioned him. He admitted to having sex with S.B. but asserted that it was consensual. On 8 May 2006 the Guilford County Grand Jury, alleging that defendant had sexual intercourse with S.B. "by force and against the victim's will[,] returned an indictment for second degree rape. On 2 April 2007, a superseding indictment alleged that defendant "unlawfully, willfully and feloniously did carnally know and abuse [S.B.] who was at the time mentally disabled, mentally incapacitated, and/or physically helpless." Defendant was tried before a jury in Superior Court, Guilford County, from 9 to 13 April 2007. The jury found defendant guilty of second degree rape. Upon the jury verdict, the trial court sentenced defendant to 70 to 93 months imprisonment. Defendant appeals.

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II. The Indictment

Defendant contends that the superceding indictment was facially invalid because it alleged that defendant “unlawfully, willfully and feloniously did carnally know and abuse [S.B.], who was at the time mentally disabled, mentally incapacitated and/or physically helpless.” (Emphasis added.) A facially invalid indictment deprives the trial court of jurisdiction to enter judgment in a criminal case. *State v. Call*, 353 N.C. 400, 429, 545 S.E.2d 190, 208, cert. denied, 534 U.S. 1046, 122 S.Ct. 628, 151 L.Ed.2d 548 (2001). Indictments alleged to be facially invalid are therefore reviewed de novo. *State v. Marshall*, --- N.C.App. ---, ---, 656 S.E.2d 709, 712, disc. review denied, --- N.C. ---, 661 S.E.2d 890 (2008).

Although use of the phrase “and/or” in indictments has been criticized by the North Carolina Supreme Court, it is not per se fatal to the indictment. See, e.g., *State v. Daughtry*, 236 N.C. 316, 319, 72 S.E.2d 658, 660 (1952) (criticizing the use of “and/or” in indictments, but finding no error when the indictment was “sufficiently intelligible and explicit to (1) inform the defendant of the charge he must answer, (2) enable him to prepare his defense, and (3) sustain the judgment.” (Citation and quotation omitted.)). An indictment is not facially invalid as long as it notifies an accused of the charges against him sufficiently to allow him to prepare an adequate defense and to protect him from double jeopardy. *State v. Lowe*, 295 N.C. 596, 603, 247 S.E.2d 878, 883 (1978). Notification is sufficient if the illegal act or omission alleged in the indictment is “clearly set forth so that a person of common understanding may know what is intended.” *State v. Coker*, 312 N.C. 432, 435, 323 S.E.2d 343, 346 (1984).

Short form indictments are permitted in prosecutions for rape by N.C. Gen.Stat. § 15-144.1, which states in pertinent part:

(a) In indictments for rape it is not necessary to allege every matter required to be proved on the trial.

(c) If the victim is a person who is mentally disabled, mentally incapacitated, or physically helpless it is sufficient to allege that the defendant unlawfully, willfully, and feloniously did carnally know and abuse a person who was mentally disabled, mentally incapacitated or physically helpless, naming such victim, and concluding as aforesaid. Any bill of indictment containing the averments and allegations herein named shall be good and sufficient in law for the rape of a mentally disabled, mentally incapacitated or physically helpless person and all lesser included offenses.

N.C. Gen.Stat. § 15-144.1 (2005) (emphasis added). A short-form indictment for rape which tracks the language of N.C. Gen.Stat. § 15-144.1 is sufficient to give the trial court jurisdiction to enter judgment, “even though such indictments do not specifically allege each and every element,” *State v. Harris*, 140 N.C.App. 208, 215, 535 S.E.2d 614, 619, disc. review denied and appeal dismissed, 353 N.C. 271, 546 S.E.2d 122 (2000), because such an indictment specifies the offense “[i]n words having precise legal import [thereby] put[ting] the defendant on notice that he will be called upon to defend against proof of the manner and means by which the crime was perpetrated.” *Lowe*, 295 N.C. at 604, 247 S.E.2d at 883-84.

Except for the insertion of the words “and/or” in place of “or” the indictment tracked the language of N.C. Gen.Stat. § 15-144.1(c) precisely. From reading the indictment, a person of common understanding would know that the intent of the indictment was to accuse defendant of having sexual intercourse with a person deemed by law to be incapable of giving consent. In turn, this language was sufficient to notify defendant of the charges against him in order to prepare an adequate defense and to protect him from being punished a second time for the same act. The indictment sub judice might have been clearer if only the word “or” or the word “and” had been used, but we hold that the use of “and/or” did not render the indictment facially invalid.

III. Unanimous Jury Verdict

Defendant contends that his constitutional right to a unanimous jury verdict was violated when the trial court gave ambiguous instructions to the jury. N.C. Const. art. I, § 24. The allegedly erroneous instruction stated, in pertinent part:

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant engaged in vaginal intercourse with the victim, and at the time (a) the victim was so substantially incapable of appraising the nature of her conduct or resisting an act of vaginal intercourse as to be mentally incapacitated; or, (b) the victim was so physically unable to resist an act of vaginal intercourse or communicate unwillingness to submit to an act of vaginal intercourse as to be physically helpless, and that the defendant knew or should reasonably have known that the victim was mentally incapacitated or physically helpless, it would be your duty to return a verdict of guilty.

Defendant contends that the trial court’s jury instruction was ambiguous in two ways. First, he contends that the instruction was ambiguous because it was a disjunctive instruction which offered the jury a choice between two discrete criminal acts. Second, he contends that even if simply joining the instruction on mental capacity and the instruction on physical helplessness in the disjunctive was not ambiguous, the portion of the

instruction relating to mental incapacity was ambiguous because it misstated the law. The State argues that the disjunctive instruction was not ambiguous and that the law was correctly stated.

For the reasons that follow, we disagree with defendant that the disjunctive instruction improperly gave the jury a choice between two discrete criminal acts. However, we agree with defendant that the instruction was ambiguous because the jury instruction on mental incapacity misstated the law.

A. Standard of Review

Defendant did not object to the jury instructions at trial, on constitutional grounds or otherwise. In general, a constitutional issue may not be raised for the first time on appeal. *State v. Chapman*, 359 N.C. 328, 360, 611 S.E.2d 794, 819 (2005). However, the North Carolina Supreme Court has recognized an exception for assignments of error which allege that a defendant's constitutional right to a unanimous jury verdict has been violated. *State v. Ashe*, 314 N.C. 28, 39, 331 S.E.2d 652, 659 (1985) (holding that because the defendant's right to a unanimous jury verdict had been violated when the trial judge spoke only with the jury foreman and not the whole jury when ruling that the jury could not review the evidence after beginning their deliberations, failure to object at trial did not waive the right to raise the issue on appeal); see also *State v. Mueller*, 184 N.C.App. 553, 575-76, 647 S.E.2d 440, 456 (extending the holding of *Ashe* to review defendant's appellate argument that ambiguous indictments led to a nonunanimous jury verdict even though he had not raised the issue at trial), cert. denied, 362 N.C. 91, 657 S.E.2d 24 (2007).

When a criminal defendant is denied a right arising under the North Carolina Constitution, he is entitled to a new trial only "when there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises." N.C. Gen.Stat. § 15A-1443(a) (2005); *State v. Hartness*, 326 N.C. 561, 569, 391 S.E.2d 177, 182 (1990). Contra *State v. Smith*, 188 N.C.App. 207, ---, 654 S.E.2d 730, 735-36 (2008) ("Although the right to presence arises under the North Carolina Constitution, a new trial is appropriate unless the State proves the error to be harmless beyond a reasonable doubt."); see N.C. Gen.Stat. § 15A-1443(b) (2005) ("A violation of the defendant's rights under the Constitution of the United States is prejudicial unless the appellate court finds that it was harmless beyond a reasonable doubt. The burden is upon the State to demonstrate, beyond a reasonable doubt, that the error was harmless.").

B. Disjunctive Instructions

First we consider defendant's contention that the instruction was error because the clauses on mental incapacity and on physical helplessness were joined by the disjunctive "or".¹ Defendant relies on *State v. Diaz*, 317 N.C. 545, 346 S.E.2d 488 (1986), to contend that a disjunctive instruction on the elements of a crime is fatally ambiguous unless the two clauses joined by the disjunctive are synonymous. We disagree.

A fatally ambiguous jury instruction violates a defendant's constitutional right to a unanimous verdict. N.C. Const. art. I, § 24; *State v. Lyons*, 330 N.C. 298, 307, 412 S.E.2d 308, 314 (1991); see also N.C. Gen.Stat. § 15A-1237(b) (2005) ("The verdict must be unanimous, and must be returned by the jury in open court."). *Diaz*, *supra*, and *Hartness*, *supra*, are the seminal cases in North Carolina regarding whether a disjunctive jury instruction is fatally ambiguous; both *Hartness* and *Diaz* have given rise to a line of cases applying the principles found therein. See, e.g., *State v. Funchess*, 141 N.C.App. 302, 307-09, 540 S.E.2d 435, 438-39 (2000) (discussing the differences between the *Diaz* line and the *Hartness* line); *State v. Almond*, 112 N.C.App. 137, 144, 435 S.E.2d 91, 96 (1993) ("[T]he difference [between the *Hartness* line and the *Diaz* line] is whether the two underlying acts are separate offenses or whether they are merely alternative ways to establish a single offense."). *Diaz* held that when the underlying acts joined by the disjunctive are separate offenses for which a defendant may be separately convicted and punished, the jury instruction is fatally ambiguous. 317 N.C. at 554-55, 346 S.E.2d at 494-95. *Hartness*, on the other hand, held that when the underlying acts joined by the disjunctive constitute a "single wrong . . . established by a finding of various alternative elements," the jury instruction is not fatally ambiguous. 326 N.C. at 566, 391 S.E.2d at 180. To decide whether the underlying acts joined by the disjunctive are separate offenses or merely alternative ways to establish a single offense, this Court considers the gravamen of the offense, determined by considering the evil the legislature intended to prevent and the applicable statutory language. *Lyons*, 330 N.C. at 305-06, 412 S.E.2d at 313-14.

The gravamen of the offense of second degree rape is forcible sexual intercourse. N.C. Gen.Stat. § 14-27.3 (2005). Force may be shown in several alternative ways including: (1) actual force, *State v. Hall*, 293 N.C. 559, 562-63, 238 S.E.2d 473, 475 (1977) (defendant grabbed victim's neck and pushed her onto the bed); (2) constructive force, *State v. Parks*, 96 N.C.App. 589, 594, 386 S.E.2d 748, 752 (1989) ("threats and displays of force by defendant for the purpose of compelling the victim's submission to sexual intercourse"); and (3) force implied in law, which includes sexual intercourse with a person who is mentally incapacitated, *State v. Washington*, 131 N.C.App. 156, 167, 506 S.E.2d 283, 290 (1998) ("[O]ne who is mentally defective under the sex offense laws is statutorily deemed incapable of consenting to intercourse or other sexual acts. [F]orce is inherent to having sexual intercourse with a person who is deemed by law to be unable to consent." (Citations and quotation marks omitted.)), disc. review denied and appeal dismissed, 350 N.C. 105, 533 S.E.2d 477-78 (1999), sleeping, *State v. Moorman*, 320 N.C. 387, 392, 358 S.E.2d 502, 506 (1987) ("[S]exual intercourse with

[a sleeping] victim is ipso facto rape because the force and lack of consent are implied in law.”), or physically helpless, *State v. Aiken*, 73 N.C.App. 487, 499, 326 S.E.2d 919, 926 (“The physical act of vaginal intercourse with the victim while she is physically helpless is sufficient ‘force’ for the purpose of second degree rape[.]”), disc. review denied and appeal dismissed, 313 N.C. 604, 332 S.E.2d 180 (1985).

Because mental incapacity and physical helplessness are but two alternative means by which the force necessary to complete a rape may be shown, and not discrete criminal acts, we conclude that this case is analogous to *Hartness*, 326 N.C. at 566-67, 391 S.E.2d at 180-81, and hold that the jury instruction excepted to sub judice was not fatally ambiguous simply because the physical helplessness clause and the mental incapacity clause were joined in the disjunctive. Accordingly, we overrule this assignment of error.

C. Instruction on Mental Incapacity

Defendant alternatively contends that the jury instruction quoted supra is fatally ambiguous because the words “due to any act committed upon the victim” were omitted from the instruction on mental incapacity.² The State argues in its brief that the omission of those words was not error, because

[t]he term ‘any act committed upon the victim’ in N.C.G.S. § 14-27.1(2) may be broadly interpreted to include acts by others, by the victim, by animals, and/or inert objects. For purposes of this statute, a victim could be hit by a falling boulder rendering the victim incapacitated or bit [sic] by an insect causing a severe allergic reaction rendering the victim incapacitated. In the case at bar, the act committed upon the victim was the act of the victim consuming large quantities of alcohol.

(Emphasis added.)

The State’s broad construction of the statute would render the words “due to any act committed upon the victim” unnecessary surplusage which need not be included in a jury instruction where a rape charge is based upon the mental incapacity of the victim. We disagree with the State.

“A trial judge is required to instruct the jury on the law arising on the evidence. This includes instruction on the elements of the crime. Failure to instruct upon all substantive or material features of the crime charged is error.” *State v. Whiteley*, 172 N.C.App. 772, 780, 616 S.E.2d 576, 581 (2005) (citations, ellipses and quotation marks omitted). Therefore, in reviewing this assignment of error our task is to construe N.C. Gen.Stat. § 14-27.1 in order to determine whether or not the words “due to any act committed upon” the victim constitute a material feature of the crime charged. We conclude that they do.

[W]e are guided by the principle of statutory construction that a statute should not be interpreted in a manner which would render any of its words superfluous. We construe each word of a statute to have meaning, where reasonable and consistent with the entire statute, because it is always presumed that the legislature acted with care and deliberation.

State v. Coffey, 336 N.C. 412, 417-18, 444 S.E.2d 431, 434 (1994) (citations, quotation marks, ellipses and brackets omitted). The other principle which guides us is that “[i]n construing ambiguous criminal statutes, we apply the rule of lenity, which requires us to strictly construe the statute.” *State v. Hinton*, 361 N.C. 207, 211, 639 S.E.2d 437, 440 (2007).

At common law, the doctrine of force implied in law protected the class of persons who were “unconscious or insensibly drunk,” whether the intoxicating substance was administered involuntarily by the defendant or someone else, or was voluntarily ingested by the victim. *Aiken*, 73 N.C.App. at 499, 326 S.E.2d at 926.³ In the current statutory codification of the law of rape, the General Assembly clearly intended to continue to protect that class of persons when it inserted the subsection criminalizing intercourse with someone who is physically helpless.⁴ N.C. Gen.Stat. § 14-27.3(a)(2) (2005); compare *Moorman*, 320 N.C. at 392, 358 S.E.2d at 506 (“Our rape statutes essentially codify the common law of rape.” (Citing N.C. Gen.Stat. § 14-27.2 et seq.)), with *State v. Turman*, 52 N.C.App. 376, 377, 278 S.E.2d 574, 575 (1981) (“The purpose of the [indecent liberties] statute is to give broader protection to children than the prior laws provided.”). For purported rape victims with a lesser degree of impairment than physical helplessness, the question sub judice is whether the General Assembly intended for the protection of the doctrine of force implied in law to be extended to negate the consent of alleged victims who have voluntarily ingested intoxicating substances through their own actions. We conclude that it did not.

Under the plain language of N.C. Gen.Stat. § 14-27.3 and N.C. Gen.Stat. § 14-27.1(2), the protection of the doctrine of force implied in law was extended to a person who is suffering from a lesser degree of impairment than “unconscious or insensibly drunk” when that person is “substantially incapable of either appraising the nature of his or her conduct, or resisting the act of vaginal intercourse or a sexual act” and the person’s condition was “due to any act committed upon the victim.” N.C. Gen.Stat. § 14-27.1(2) (2005). Although the words “committed upon” the victim could extend to acts committed by someone other than the person accused of the rape, *Aiken*, 73 N.C.App. at 499, 326 S.E.2d at 926, this phrase connotes an action committed upon the victim and not a voluntary act by the victim herself. Thus, the language of the statute, strictly construed as

required for criminal statutes, Hinton, 361 N.C. at 211, 639 S.E.2d at 440, leads us to conclude that the protection of the statute does not serve to negate the consent of a person who voluntarily and as a result of her own actions becomes intoxicated to a level short of unconsciousness or physical helplessness as defined by N.C. Gen.Stat. § 14-27.1(3) (2005). Because we must strictly construe the statute, Hinton, 361 N.C. at 211, 639 S.E.2d at 440, limiting criminal liability to acts which the General Assembly clearly intended to forbid,⁵ we decline the State's invitation to interpret the statute broadly to render the words "due to any act committed upon the victim" as unnecessary surplusage which need not be included in a jury instruction on mental incapacity.

For these reasons we hold that the words "due to any act committed upon the victim" were material to instructing the jury on the law of second degree rape. Accordingly, we conclude that the trial court erred when it did not include those words in the jury instruction quoted *supra*.

This error rendered the jury verdict fatally ambiguous, depriving the defendant of his constitutional right to a unanimous verdict granted by the North Carolina Constitution. N.C. Const. art. I, § 24. He is entitled to a new trial for this error if there is a reasonable possibility that a different result would have been reached at trial. N.C. Gen.Stat. § 15A-1443(a); Diaz, 317 N.C. at 554, 346 S.E.2d at 494. A careful review of the record shows that the evidence essentially boils down to a "he said/she said" version of the event. The evidence is uncontradicted that S.B. was voluntarily highly intoxicated as a result of her own actions at the time she had sexual intercourse with defendant. There was contradictory evidence as to whether S.B. was intoxicated to the point of being unconscious or physically helpless or to a lesser degree of impairment. We therefore conclude that there is a reasonable possibility that a different result would have been reached at trial if the jury had been properly instructed. Accordingly, we grant defendant a new trial on the charge of second degree rape.

NEW TRIAL.

FOOTNOTES

1. Because we are granting defendant a new trial on a different assignment of error, it would not be necessary to consider this argument except that the issue may arise at a new trial. *State v. Barrow*, 350 N.C. 640, 645, 517 S.E.2d 374, 377 (1999).
2. N.C. Gen.Stat. § 14-27.1(2) defines a mentally incapacitated victim as "a victim who due to any act committed upon the victim is rendered substantially incapable of either appraising the nature of his or her conduct, or resisting the act of vaginal intercourse or a sexual act." *Id.* (emphasis added).
3. We acknowledge that some of the language in Aiken tends to conflate physical helplessness with mental incapacity. 73 N.C.App. at 499, 326 S.E.2d at 926. However, the statute expressly distinguishes physical helplessness from mental incapacity. N.C. Gen.Stat. § 14-27.1. Furthermore, the holding of Aiken is firmly grounded in the victim's physical helplessness in that the evidence showed that the victim was unconscious when the defendant had sexual intercourse with her, *id.*, and the defendant argued only that the jury instruction on physical helplessness was error, *id.* at 498, 326 S.E.2d at 925.
4. " 'Physically helpless' means (i) a victim who is unconscious; or (ii) a victim who is physically unable to resist an act of vaginal intercourse or a sexual act or communicate unwillingness to submit to an act of vaginal intercourse or a sexual act." N.C. Gen.Stat. § 14-27.1(3) (emphasis added).
5. The General Assembly could clarify the law of mental incapacity as applied to rape and other sexual offenses by adding words as Florida has done: "Mentally incapacitated" means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent. Fla. Stat. § 794.011(1)(c) (2007) (emphasis added); see also *Coley v. State*, 616 So.2d 1017, 1022-23 (Fla.App. 3 Dist.1993) ("Plainly . the Florida sexual battery statute does not place voluntary drug or alcohol consumption on the same footing as involuntary consumption. The prevailing view is that voluntary consumption of drugs or alcohol does not, without more, render consent involuntary."). The General Assembly could also leave out the "any act committed upon the victim" language altogether as Virginia has done: "Mental incapacity" means that condition of the complaining witness existing at the time of an offense under this article which prevents the complaining witness from understanding the nature or consequences of the sexual act involved in such offense and about which the accused knew or should have known. Va.Code Ann. § 18.2-67.10(3) (2004) (italics in original); see also *Molina v. Commonwealth*, 272 Va. 666, 636 S.E.2d 470, 474-75 (2006) (discussing the meaning of mental incapacity under Virginia law).

STROUD, Judge.

Judges HUNTER and TYSON concur.

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