

## JOINDER AND SEVERANCE

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**I. Introduction.** This Chapter discusses joinder and severance of offenses and defendants. Additional resources on these subjects are JOHN RUBIN, PHILLIP R. DIXON JR., AND ALYSON A. GRINE, NORTH CAROLINA DEFENDER MANUAL VOL. 1 PRETRIAL, Ch. 6, [Joinder and Severance](#) (2020 ed.) and North Carolina Prosecutors Resource Online, [Joinder of Offenses and Defendants](#), [Severance and Bruton Issues](#). Incorporation in part of excerpts from these publications is gratefully acknowledged.

**II. Joinder and Severance of Offenses.** The law favors trying joinable offenses in a single trial. See *State v. Nelson*, 298 N.C. 573, 586 (1979) (“[P]ublic policy strongly compels [joinder] as the rule rather than the exception.”); *State v. Manning*, 139 N.C. App. 454, 459 (2000) (public policy favors consolidation of offenses because it expedites administration of justice, reduces congestion, and lessens burden on jurors and witnesses), *aff’d per curiam*, 353 N.C. 449 (2001); G.S. 15A-926(c)(1) (defendant’s timely motion to join factually related offenses for which he or she has been indicted or charged must be granted unless doing so would defeat the ends of justice).

Two or more joinable offenses may be charged in one pleading. G.S. 15A-926(a). Each offense must be stated in a separate count (e.g., first-degree murder in one count and armed robbery in another count) as required by G.S. 15A-924. *Id.*

Except as discussed in Section II.E., below, the statutory requirements concerning joinder of offenses apply only to offenses that are actually pending against a defendant at the time of trial. *State v. Furr*, 292 N.C. 711, 201 (1977) (defendant at a second murder trial was not entitled to dismissal of solicitation charges for failure to join them at the first trial under G.S. 15A-926(c)(2) because he had not been indicted for solicitation at the time of the first trial).

**A. Joinder of Offenses.** Determining if joinder is appropriate involves a two-step analysis: first, assessing the connection between the charged offenses, and second, evaluating whether trying them in a single trial would defeat the ends of

justice or impair the defendant's right to a fair trial. G.S. 15A-926; *State v. Perry*, 142 N.C. App. 177, 180-81 (2001).

1. **Transactional Connection.** The first question in determining whether joinder is appropriate is whether there is a transactional connection, or a factual nexus, among the charged offenses. G.S. 15A-926(a) provides that offenses—felonies, misdemeanors, or both—may be joined for trial if they are based on
  1. “the same act or transaction,” or
  2. “a series of acts or transactions connected together or constituting parts of a single scheme or plan.”

Offenses that meet one of these two criteria are joinable. Joinder of offenses that do not have a transactional connection is improper as a matter of law. *State v. Silva*, 304 N.C. 122, 126 (1981). The existence of a transactional connection between offenses is determined at the time of the trial court's decision on joinder. *Id.* If subsequent developments at trial negate the transactional link between offenses, the initial joinder is not automatically rendered improper; in such a case, a defendant's remedy is to move for severance. *Id.*

So long as offenses have a sufficient transactional connection, whether to join them is “addressed to the discretion of the trial court and, absent a showing of abuse of discretion, its ruling will not be disturbed on appeal.” *State v. Avery*, 302 N.C. 517, 524 (1981); *State v. Hair*, 292 N.C. App. 484, 488 (2024); *State v. Yarborough*, 271 N.C. App. 159, 164 (2020).

- a. **Factors When Deciding Sufficient Nexus.** In deciding whether offenses have a sufficient factual nexus to be joined for trial, courts have considered such factors as:

- temporal proximity;
- geographical proximity;
- similarities among victims;
- whether the same evidence or witnesses will be used to prove both offenses;
- whether the offenses are similar in type or circumstance;
- whether the defendant had a similar motive to commit both offenses; and
- whether a similar modus operandi was used in committing both offenses.

See generally *State v. Bracey*, 303 N.C. 112, 118 (1981) (on motion for joinder, courts consider similarity in time, place, motive, victims, and circumstance); *Hair*, 292 N.C. App. at 489 (murder, robbery, and intimidating a witness charges properly joined because intimidation charge was predicated on defendant's beliefs concerning his pending trial on the other offenses; trial court did not abuse its discretion in consolidating the charges as evidence of the defendant's assault on a witness would have been admissible in his murder and robbery trial even if the intimidation



which statute applies, the test is still the same.”). Selected examples of factors relevant to these analyses are discussed below.

1. **Evidentiary Issues.** Offenses should not be joined if doing so will result in the admission or exclusion of evidence in a manner that defeats the ends of justice or impairs the defendant’s right to a fair trial. See, e.g., *State v. Williams*, 113 N.C. App. 686, 692 (1994) (the trial court properly severed a seat belt violation charge from a DWI trial when, under G.S. 20-135.2A, evidence of a seat belt violation was inadmissible in a trial of DWI case). See also *State v. Knight*, 262 N.C. App. 121, 125 (2018) (not an abuse of discretion to deny defendant’s motion for severance on basis that he would have elected to testify as to one offense had it not been joined with another against which he did not wish to testify; offenses arose from continuing course of conduct); *State v. Voltz*, 255 N.C. App. 149, 154 (2017) (considering but rejecting the defendant’s argument that joinder was improper because witness testimony that was inadmissible as to one offense was admissible as to the other offense because it raised doubt whether the defendant was the perpetrator; contrary to defendant’s argument, evidence at issue was inadmissible as to both offenses and properly excluded).

An example where joinder could lead to the receipt of otherwise inadmissible evidence is when the State seeks to join a charge of possession of a firearm by a felon with other charges. The possession charge requires the State to prove a prior felony conviction as an element of the offense, and the evidence of the defendant’s prior criminal history might not otherwise be admissible. However, in one case the Court of Appeals declined to find that joinder of such charges was error. See *State v. Cromartie*, 177 N.C. App. 73, 77-78 (2006) (joinder over defendant’s objection of charges of possession of a firearm by a felon and assault with a deadly weapon with intent to kill inflicting serious injury did not unjustly or prejudicially hinder the defendant’s ability to defend himself or receive fair hearing; court noted that evidence was “not complicated” and the trial court’s jury instructions “clearly separated the two offenses”); see also *State v. Walker*, 154 N.C. App. 645, 652 (2002) (no plain error where trial court did not *sua sponte* sever felon in possession charge from burglary and armed robbery charges).

If a charge of possession of a firearm by a felon is joined with another charge, defense counsel may seek to limit the potential prejudice by offering to stipulate that the defendant has been convicted of a felony and requesting that the nature of the prior felony conviction not be allowed into evidence. North Carolina cases have not required the acceptance of such a stipulation, however. Compare *Old Chief v. United States*, 519 U.S. 172, 192 (1997) (under federal rules of evidence, stipulation satisfies prior conviction element of possession of firearm by a felon; in those circumstances the risk of prejudice of evidence of the nature of the conviction outweighs its probative value), with *State v. Little*, 191 N.C. App. 655, 661 (2008) (trial court did not err in allowing State to offer evidence about nature of prior felony conviction in lieu of defendant’s stipulation to conviction). For an extensive discussion of *Old Chief* and the related North Carolina cases, see [Criminal Evidence: Rule 403](#) in this Benchbook.

2. **Separate Defenses.** Courts have considered whether the defendant's ability to defend against the charges is hindered when the defendant has a separate defense against each charge. See *State v Huff*, 325 N.C. 1, 24 (1989) (rejecting defendant's contention that joinder of two murder charges precluded the jury's fair consideration of his insanity defense to one murder and lack of premeditation and deliberation defense to the other murder; the record showed that the defendant in fact presented both defenses to each murder and the jury considered but disbelieved them), *vacated on other grounds*, 497 U.S. 1021 (1990).
  3. **Risk of Jury Confusion.** Sometimes joinder of multiple offenses risks confusing the jury because of the volume and complexity of the evidence. See *Knight*, 262 N.C. App. at 126 ("[N]either the number of offenses nor the complexity of the evidence offered necessitated severance of the offenses for trial."). Cf. *State v. Williams*, 74 N.C. App. 695, 699 (1985) (erroneous joinder of thirteen different charges which lacked sufficient transactional connection was prejudicial in part because it confused jury).
  4. **Lack of Evidence.** As noted above, G.S. 15A-926(c)(1) specifically provides that a trial court should not allow a defendant's motion for joinder of an offense for which the State, at the relevant time, lacks sufficient evidence to warrant a trial.
  5. **Strength of Evidence.** Appellate cases have considered but rejected the defense argument that it was improper to join an offense for which the State had strong evidence with one the defendant asserted was supported by weaker evidence. See, e.g., *State v. Moses*, 350 N.C. 741, 751 (1999); *State v. Chapman*, 342 N.C. 330, 341 (1995).
- D. **Procedural Rules for Motions for Joinder or Severance of Offenses.** G.S. 15A-951(a) provides that a motion must be in writing unless made during a hearing or trial.
1. **Motions for Joinder.** A motion for joinder of offenses for trial is necessary when the offenses have been charged in separate pleadings. Cf. G.S. 15A-926(a) (permitting related offenses to be joined in one pleading). AOC-CR-212 provides a form motion and order for joinder that may be used by the State or the defendant.
    - a. **Timing of Defendant's Motion.** A defendant's motion for joinder of offenses must be made (1) at or before arraignment or, (2) if arraignment is not requested, not later than 21 days from the date of the indictment. G.S. 15A-952(b)(6)e. The failure to timely file the motion constitutes a waiver of the motion, though the court may grant relief from a waiver. G.S. 15A-952(e). The statute does not prescribe a standard to grant relief, so it is likely in the court's discretion.
    - b. **Timing of State's Motion.** The time limits for a defendant's motion for joinder of offenses do not apply to motions by the State. *State v. Slade*, 291 N.C. 275, 281 (1976) (prosecutor's oral motion for joinder at beginning of trial was permissible); *State v. Street*, 45 N.C. App. 1, 5 (1980) (noting that G.S. 15A-952(b)(6)e. specifically refers to motions made under G.S. 15A-926(c), which solely concerns defense motions). If a last-minute motion by the State hinders the defendant's preparation for trial, the court may

exercise its discretion to grant a defendant's request for a continuance.

**2. Motions for Severance.**

- a. Timing of Defendant's Motion.** A defendant's motion for severance of offenses must be made (1) at or before arraignment or, (2) if arraignment is not requested, not later than 21 days from the date of the indictment. G.S. 15A-927(a)(1); G.S. 15A-952(b)(6)d. The failure to timely file the motion constitutes a waiver of the motion, though the court may grant relief from a waiver. G.S. 15A-952(e). If a defendant's pretrial motion for severance is overruled, the motion may be renewed on the same grounds before or at the close of all the evidence. G.S. 15A-927(a)(2). Any right to severance is waived by failure to renew the motion. *Id.*; *State v. Groat*, 293 N.C. App. 718, 721 (2024) (defendant waived severance argument by failing to renew motion); see also *State v. Yarborough*, 271 N.C. App. 159, 164 (2020) (defendant's objection to State's motion for joinder did not constitute a motion for severance). An exception to the requirement that the motion be made before trial is that a defendant may move for severance during trial before or at the close of the State's evidence if the motion is based upon a ground not previously known. G.S. 15A-927(a)(1).
- b. Timing of State's Motion.** A prosecutor's motion for severance of offenses may be granted only before trial unless the motion is consented to by the defendant during trial. G.S. 15A-927(a)(3). In contrast to motions by a defendant, G.S. 15A-927 does not explicitly subject motions for severance by the State to the timing requirements for pretrial motions of G.S. 15A-952.
- c. Right to Mistrial if Severance Granted During Trial.** If a motion for severance of offenses is granted during trial, a motion by the defendant for a mistrial must be granted. G.S. 15A-927(a)(4).

- 3. Action on Court's Own Motion.** The court may order a severance of offenses before trial on its own motion if severance could be obtained by a motion of the defendant or prosecutor. G.S. 15A-927(e). In the context of joinder of defendants, the Court of Appeals has held that a trial court may order joinder on its own motion. See *State v. Cottingham*, 30 N.C. App. 67, 69 (1976) (the trial judge may direct that criminal cases be consolidated for trial when proper grounds for joinder exist and joinder will promote the ends of justice and facilitate the proper disposition of cases); *State v. Poindexter*, 68 N.C. App. 295, 298 (1984) (citing *Cottingham* for the proposition: "when grounds for joinder set forth in G.S. 15A-926(b)(2) exist . . . the court can order a joinder on its own initiative").

- E. Statutory Right to Dismissal of Joinable Offenses under Certain Circumstances.** G.S. 15A-926(c) provides that a defendant who has been tried for an offense may move to dismiss a later charge of any joinable offense, and this motion must be granted unless any of the following exceptions apply:

1. A motion for joinder of the offenses was previously denied,
2. The court finds that the right of joinder has been waived, or

3. The court finds that because the prosecutor did not have sufficient evidence to warrant trying this offense at the time of the first trial, or because of some other reason, the ends of justice would be defeated if the motion were granted.

G.S. 15A-926(c)(2). See also G.S. 15A-926 Official Commentary (statute was intended to bar successive trials of offenses absent some reason for separate trials). North Carolina's statutory right to dismissal is broader than double jeopardy protections because it bars subsequent prosecutions of related offenses, not just the same or lesser offenses. For the related constitutional issues of double jeopardy and collateral estoppel, see [Double Jeopardy and Related Issues](#). There are a number of limits to this right, however. First, the statute applies only to charges brought after the first trial. It creates no right to dismiss joinable charges that were pending at the time of the first trial. G.S. 15A-926(c)(2)a., b. (no right to dismissal if the defendant fails to move to join charges thereby waiving the right to joinder, or if defendant makes such a motion for joinder and the motion is denied). Second, the right to dismissal of a successor charge does not apply if the defendant pled guilty or no contest to the previous charge. G.S. 15A-926(c)(3). Third, the court may deny a motion to dismiss if it finds that the prosecution did not have sufficient evidence to try the successor charge at the time of trial or that the ends of justice would be defeated by granting the motion. G.S. 15A-926(c)(2)c.

Case law has further delineated the right. In *State v. Furr*, 292 N.C. 711 (1977), after the defendant's first trial for murder ended in a mistrial, he was charged with several counts of the related offense of solicitation to commit the murder. At the second trial, the trial court denied the defendant's motion to dismiss the solicitation charges under G.S. 15A-926(c). Upholding the trial court's ruling, the Court pointed out that there were no solicitation charges when the murder case was tried, and it noted that there was no evidence to indicate that the prosecution had held the solicitation charges in reserve pending the outcome of the murder trial. 292 N.C. at 724.

Later in *State v. Warren*, 313 N.C. 254 (1985), the Court explicitly recognized the qualification implied by *Furr* that a defendant is entitled to a dismissal of joinable offenses only if the defendant shows the sole reason that the State withheld indictment on the offenses was to circumvent the statutory joinder requirements. A defendant may meet this burden by showing that:

1. the State had substantial evidence of the later charge at the time of the first trial, or
2. the State's evidence at a second trial would be the same as at the first trial.

*Id.* at 260 (finding that the defendant failed to make such a showing and that there were valid reasons for the State's failure to seek an indictment charging larceny and burglary before the defendant was tried on a related murder charge). See also *State v. Tew*, 149 N.C. App. 456, 459 (2002) (trial court did not err in denying the defendant's motion to dismiss a felony assault charge brought after an initial trial for attempted murder as there was no evidence that the State withheld the indictment to circumvent joinder requirement). In *State v. Schalow*, the Court emphasized that finding either or both of the circumstances identified in *Warren* supports but does not compel a determination that the State withheld

indictment of a joinable offense for the sole purpose of circumventing the statutory joinder requirements. 379 N.C. 639, 654 (2021). Reversing the opinion of the Court of Appeals below that treated the *Warren* rule as mandatory rather than permissive, the Supreme Court explained that when assessing a failure to join claim a trial court “must assess the justification offered by the State and determine if legitimate prosecutorial reasons supported [the State’s] conduct.” *Id.* at 652. A defendant must raise a G.S. 15A-926(c) argument with the trial court to preserve it for appellate review. *Id.* at 653-54, n.4.

**III. Joinder and Severance of Defendants.** For reasons of judicial economy, the law generally favors the joinder of defendants when they were engaged in the same criminal act. See, e.g., *State v. Nelson*, 298 N.C. 573, 586 (1979) (“public policy strongly compels consolidation as the rule rather than the exception” when each defendant is sought to be held accountable for the same crime or crimes). Joinder of defendants also is permitted when different criminal acts share a transactional connection. See G.S. 15A-926(b)(2). Each defendant joined for trial must be charged in a separate pleading. G.S. 15A-926(b)(1).

There is no bar to the successive trial of different defendants for the same crime; however, in some instances, the acquittal of one defendant may bar conviction of another. Compare *State v. Suites*, 109 N.C. App. 373, 378 (1993) (acquittal of named principal bars conviction of defendant as accessory before the fact), with *State v. Reid*, 335 N.C. 647, 657 (1994) (acquittal of named principal does not bar conviction of other principals based on aiding and abetting).

The joinder of defendants is more likely to be prejudicial than the joinder of offenses because of the possibility of antagonistic defenses and of issues concerning the admissibility of blame-shifting confessions, as discussed below.

**A. Joinder of Defendants.** Just as with joinder of offenses, there are two distinct determinations that the trial court must make in deciding whether to join or sever codefendants for trial. First, the court must determine whether the defendants are potentially joinable under G.S. 15A-926(b) based on a transactional connection between offenses. Second, if the defendants are potentially joinable, then the court must decide whether joinder would impair a fair determination of any defendant’s guilt or innocence or deny any of the defendants a right to a speedy or fair trial. G.S. 15A-927(c); *State v. Melvin*, 377 N.C. 187 (2021). If a joint trial would do so, the court must deny joinder or sever the trials, as discussed below.

**1. Transactional Connection.** G.S. 15A-926(b) permits joinder of defendants for trial if:

- each defendant is alleged to be accountable for each offense—that is, each is charged with exactly the same crime or crimes;
- the defendants are charged with different offenses, but the offenses are part of a common scheme or plan;
- the defendants are charged with different offenses, but the offenses are part of the same act or transaction; or
- the defendants are charged with different offenses, but the offenses are so closely connected in time, place, and occasion that it would be difficult to separate proof of one charge from proof of the others.



Applying the statute, cases hold that when defendants are charged with the same crimes as actors in concert, principals and accessories, or co-conspirators, the defendants may be joined for trial. See *State v. Abraham*, 338 N.C. 315, 350 (1994) (proper to join defendants charged with homicide and assault arising out of the same transaction); *State v. Barnett*, 307 N.C. 608, 619 (1983) (joinder was proper when all defendants were charged in same felony murder as actors in concert); *State v. Clawson*, 291 N.C. App. 234, 239 (2023) (joinder was proper were defendants were charged with same drug trafficking offenses as co-conspirators); *State v. Harrington*, 171 N.C. App. 17, 22 (2005) (joinder was proper when the defendants were charged with the same offenses and the evidence showed that they had a common scheme to distribute marijuana).

As noted above, the statute allows for joinder of defendants when the defendants are charged with different offenses if the offenses are part of a common scheme or plan; are part of the same act or transaction; or are so closely connected in time, place, and occasion that it would be difficult to separate proof of one charge from proof of the others. In the following cases, the appellate courts have upheld the joinder of defendants for these reasons:

*State v. Cinema Blue of Charlotte, Inc.*, 98 N.C. App. 628, 633 (1990) (joinder upheld when different defendants were charged with separate counts of disseminating obscenity but all acts were pursuant to the same conspiracy).

*State v. Jenkins*, 83 N.C. App. 616, 617 (1986) (joinder upheld when a husband and wife were charged with indecent liberties against children for whom they provided day care; the court found that the offenses—four counts against the wife and two against the husband—were part of common scheme or plan).

*State v. Overton*, 60 N.C. App. 1, 12 (1982) (joinder of seventeen defendants charged with drug conspiracy and different substantive offenses emerging from the conspiracy was not error; ruling was decided on a finding of a single conspiracy).

*State v. Ervin*, 38 N.C. App. 261, 265 (1978) (joinder of two defendants was not error although one defendant was charged with an additional weapons offense not charged against the other; the jury received limiting instruction that certain evidence was not admissible against one of the defendants and thus the jury could separate the evidence).

2. **Fair Determination of Guilt or Innocence and Right to a Speedy or Fair Trial.** Defendants charged with offenses that have a sufficient transactional connection for joinder nevertheless should not be tried jointly if doing so would impair a fair determination of a defendant's guilt or innocence or impair any defendant's right to a speedy or fair trial. G.S. 15A-927(c); *Melvin*, 377 N.C. 187. If a joint trial would do so, the court must deny joinder or sever the trials, as discussed below.

**B. Severance or Objections to Joinder of Defendants.** G.S. 15A-927 governs severance and objections to joinder of defendants for trial. Even if defendants are charged with the same or related offenses, they should be tried separately if:

- the State intends to introduce an extrajudicial statement of a codefendant that references the moving defendant, and the State is unwilling or unable to delete all references to the moving defendant, G.S. 15A-927(c)(1);
- separate trials are necessary to “promote a fair determination of the guilt or innocence” of one or more of the defendants, G.S. 15A-927(c)(2); or
- separate trials are necessary to protect a defendant’s right to a speedy trial, *Id.*

**1. Cases Involving Extrajudicial Statements.** G.S. 15A-927(c)(1) provides a mandatory procedure applicable to situations where a defendant objects to joinder because an out-of-court statement of a codefendant makes reference to the defendant but is not admissible against him. A common example of this situation is when one codefendant makes an extrajudicial confession, incriminating the others, that is admissible against the declarant but not against the non-declarant codefendants. An extrajudicial statement must meet two basic requirements to be admissible against a criminal defendant. One, it must satisfy the Confrontation Clause of the Sixth Amendment to the United States Constitution. *Bruton v. United States*, 391 U.S. 123 (1968); *Crawford v. Washington*, 541 U.S. 36 (2004). Two, it must satisfy North Carolina’s hearsay and other evidence rules. For additional discussion of these issues, see the following three sections in this Bench Book: [The Bruton Rule: Joint Trials & Codefendants’ Confessions](#), [A Guide to Crawford and the Confrontation Clause](#), [Criminal Evidence: Hearsay](#).

If a defendant objects to a joint trial because an out-of-court statement of a codefendant refers to the defendant but is not admissible against him, the trial court must require the prosecutor to select one of the following courses:

- a joint trial at which the statement is not admitted into evidence;
- a joint trial at which the statement is admitted into evidence only after all references to the defendant have been effectively deleted so that the statement will not prejudice the defendant; or
- a separate trial of the objecting defendant.

G.S. 15A-927(c)(1)a.-c. The trial court may order the State to disclose, outside the presence of jurors, any statements made by the defendants which the State intends to introduce at trial when that information would assist the court in ruling on an objection to joinder or severance of defendants. G.S. 15A-927(c)(3). The substantive issues involved with joint trials and codefendants’ confessions are discussed in [The Bruton Rule: Joint Trials & Codefendants’ Confessions](#).

2. **Cases Not Involving Extrajudicial Statements.** The following standards apply to motions for severance or objections to joinder premised on grounds other than a codefendant's extrajudicial statement. Factors relevant to assessing whether these standards have been met are discussed in Section III.C., immediately below.

a. **Standard for Motions Prior to Trial.** Upon motion of either party prior to trial, the trial court must deny joinder or grant a severance of defendants if doing so is necessary to promote a fair determination of the guilt or innocence of any defendant or to protect a defendant's right to a fair or speedy trial. G.S. 15A-927(c)(2)a.; *Melvin*, 377 N.C. 187.

b. **Standard for Motions During Trial.** Upon motion during trial of a defendant, or the State with the defendant's consent, the trial court must grant the defendant a severance if doing so is necessary to achieve a fair determination of the defendant's guilt or innocence or to protect the defendant's right to a fair trial. G.S. 15A-927(c)(2)b.; *Melvin*, 377 N.C. 187.

Additionally, G.S. 15A-927(d) requires that the trial court grant a defendant's motion for severance made at the conclusion of the State's case or of all the evidence if "there is not sufficient evidence to support the allegation upon which [the defendant] was joined for trial" and, in view of that lack of evidence, severance is found necessary to achieve a fair determination of the defendant's guilt or innocence.

C. **Factors in Assessing Joinder or Severance of Defendants.** Selected examples of factors relevant to an analysis of whether a joint trial would impair a fair determination of guilt or innocence or impair a defendant's right to a fair trial are discussed below.

1. **Evidentiary Issues.** Defendants should not be tried jointly if doing so will result in an issue of evidence admissibility that impairs a fair determination of guilt or innocence or impairs a defendant's right to a fair trial. For example, severance may be appropriate if a joint trial would limit the State's ability to introduce otherwise admissible evidence against one of the defendants. See, e.g., *State v. Marlow*, 334 N.C. 273, 289 (1993) (trial court properly granted State's motion to sever on this basis).

Another example of when severance may be appropriate is when the joinder of defendants for trial would result in the jury's exposure to prejudicial evidence that would not have been admitted in a separate trial. Compare *State v. Wilson*, 108 N.C. App. 575, 588 (1993) (severance was required when one defendant was charged with several crimes not charged against a codefendant; a new trial was awarded when the State presented the testimony—inadmissible against the codefendant—of eleven witnesses over two and a half days before testimony against the codefendant began, and limiting instructions were insufficient to dispel prejudice), with *State v. Ellison*, 213 N.C. App. 300, 312 (2011) (distinguishing *Wilson* and finding no error when trafficking charges were joined against two defendants and the State introduced evidence of a codefendant's drug-related activities six years earlier; the defendant failed to show that he was prejudiced by evidence involving an incident

unrelated to him and the court gave proper limiting instruction), *aff'd*, 366 N.C. 439 (2013).

In situations involving evidence that would be inadmissible in a separate trial, a defendant is entitled to limiting instructions parsing the evidence upon his or her objection or request. See *State v. Nelson*, 298 N.C. 573, 589 (1979) (“This Court has held that even a general objection by a codefendant against whom evidence is inadmissible will suffice to require the trial judge to give limiting instructions.”). An example of a limiting instruction is: “Members of the jury, [*describe the evidence or statement*] is introduced solely as you might find it applies to the defendant [*give defendant’s name*]. It has nothing to do with the defendant [*give other defendant’s name*].” See *State v. Paige*, 316 N.C. 630, 643 (1986) (noting with approval the trial court’s use of this limiting instruction).

The manner in which the trial is structured, along with the use of limiting instructions, may affect whether a defendant is prejudiced by evidence that would be inadmissible in a separate trial. Compare *State v. Holmes*, 120 N.C. App. 54, 59-60 (1995) (*Wilson* was distinguishable from this trial structured such that the jury first heard eight days of testimony relating to the defendant’s conspiracy charge in common with her codefendant followed by two days of testimony exclusively concerning the codefendant’s separate trafficking charges; one “crossover” witness was called to the stand once to testify to the conspiracy charges and again later to testify to the trafficking charges; trial court gave jury limiting instruction during testimony of another “crossover” witness delineating portions concerning only the codefendant), and *Ellison*, 213 N.C. App. at 314 (noting that testimony concerning codefendant’s drug-related activities was limited in scope and duration and trial court gave jury limiting instruction), with *Wilson*, 108 N.C. App. at 588 (limiting instructions did not cure prejudice).

2. **Antagonistic Defenses.** Severance may be required when two defendants have antagonistic defenses. Although there may be some discrepancy between the trial strategy and testimony among jointly-tried codefendants, the existence of antagonistic defenses does not automatically require severance. However, severance should be granted when codefendants’ positions are so conflicting that a joint trial would impair their right to a fair trial. See *State v. Lowery*, 318 N.C. 54, 59 (1986). Put another way, defendants should not be tried jointly if their positions are so antagonistic or conflicting that a joint trial would be more of a contest between the defendants than between the codefendants and the State. See *State v. Nelson*, 298 N.C. 573, 586-88 (1979) (stating that joinder should not be permitted if severance is necessary for a fair determination of guilt but finding that each defendant’s respective conflicting testimony was not of such magnitude when considered in the context of other evidence that the jury was likely to infer from that conflict alone that both were guilty); accord *State v. Johnson*, 164 N.C. App. 1, 10 (2004) (recognizing this principle but finding that defenses were not irreconcilable). See also *State v. Lacure*, \_\_\_ N.C. App. \_\_\_, 910 S.E.2d 443, 449 (2024) (finding that closing arguments of each defense counsel accusing the other defendant of the victim’s murder did not amount to antagonistic defenses requiring severance).

A leading case on antagonistic defenses is *State v. Pickens*, 335 N.C. 717 (1994), in which the court held that the joinder of defendants Pickens and Arrington was error. Pickens, who wanted to testify, had struck a deal with the State in which the State agreed not to cross-examine the defendant about some prior convictions. Arrington refused, however, to accept the deal and wanted to fully cross-examine his alleged accomplice. As a result of Arrington's position, Pickens did not testify, which he would have been able to do in a separate trial and thus present evidence on his behalf. Also, Pickens wanted to present significant inculpatory evidence against Arrington, which the State conceded to be admissible but the trial court ruled inadmissible based on Arrington's objection. The court noted that the trial created the spectacle of the State's watching combat between the two defendants. Arrington also identified many instances of his proffered evidence being excluded based solely on Pickens' objection.

3. **Defendant Deprived of Exculpatory Evidence.** Prejudice sometimes results from the joinder of defendants for trial when one defendant may be deprived of the benefit of exculpatory evidence or testimony. *Compare* *State v. Boykin*, 307 N.C. 87, 91 (1982) (joinder of two brothers was error; joinder prevented one brother from testifying that the reason for his false confession was to protect his brother and prevented him from presenting evidence that his codefendant brother had confessed to the offense), *and* *State v. Alford*, 289 N.C. 372, 387-88 (1976) (new trial granted when the State did not offer into evidence a codefendant's confession because it also exculpated the defendant, who could not call codefendant to testify at the codefendant's own trial), *with* *State v. Paige*, 316 N.C. 630, 641 (1986) (unsupported statement of counsel that a codefendant would testify for the defendant was insufficient to show that the defendant was deprived of opportunity to present defense; the court contrasted case to *Alford*, in which the defendant presented a signed, sworn statement of the codefendant confessing to offense and exculpating the defendant), *and* *State v. Distance*, 163 N.C. App. 711, 715 (2004) (joinder did not deprive the defendant of a fair trial; the defendant's wife, an interested witness, claimed that a codefendant told her that if he had to make a statement or talk to the police, he would make sure that they knew the defendant was not involved; the defendant offered no other evidence to corroborate his claim that the codefendant would have testified for the defendant at a separate trial and, as in *Paige*, there was no sworn statement of the codefendant exculpating the defendant).
4. **Different Degrees of Culpability.** A defendant may seek to avoid a trial with a codefendant perceived as more culpable or against whom the State will present more evidence. The defendant reasonably may fear being tarnished in the jury's eyes by his or her association with the codefendant. *See* *State v. Barnes*, 345 N.C. 184, 218 (1997) (court considers this argument but upholds joinder on facts of case); *State v. Thobourne*, 59 N.C. App. 584, 587 (1982) (court agrees that evidence against codefendant was "overwhelming" but upholds joinder, noting trial court's careful attention to limiting instructions).
5. **Jury Confusion.** In some situations a joint trial may be too complex or confusing for the jury to isolate the evidence applicable to a particular defendant. However, courts often have upheld the joinder of multiple

defendants over this objection. See, e.g., *State v. Overton*, 60 N.C. App. 1, 12 (1982) (upholding joint trial of at least 8 codefendants charged with drug offenses).

**D. Procedural Rules for Motions for Joinder or Severance of Defendants.** G.S. 15A-951(a) provides that a motion must be in writing unless made during a hearing or trial. See *State v. Slade*, 291 N.C. 275, 281 (1976) (prosecutor's oral motion for joinder of defendants made at beginning of trial was permissible).

**1. Motions for Joinder.**

**a. No Statutory Authority for Joinder Motion by Defendant.**

There is no statutory authority for a defendant to move for the joinder of codefendants for trial. *State v. Jeune*, 332 N.C. 424, 434 (1992) (G.S. 15A-926(b)(2) does not support a defense motion to compel joinder of codefendants). The appellate courts have not decided whether a trial court may join codefendants based on a motion by a defendant though, as noted below, a trial court may join defendants on its own motion.

**b. Timing of State's Motion.** Courts have approved of motions for joinder of defendants made as late as the beginning of trial. *Slade*, 291 N.C. at 282. If a last-minute motion by the State hinders the defendants' preparation for trial, the court may exercise its discretion to grant a defendant's request for a continuance. AOC-CR-212 provides a form motion and order for joinder that may be used by the State.

**2. Motions for Severance.**

**a. Timing of Defendant's Motion.** In contrast to its treatment of motions for severance of offenses, G.S. 15A-927 does not impose timing or preservation requirements on defense motions for severance of defendants. *State v. Melvin*, 377 N.C. 187 (2021) (so interpreting the statute). Thus, it is not necessary that a defendant's motion for severance from a codefendant be made prior to trial and it is not necessary that a motion made during trial be based upon a ground that was not previously known, as is the case with defense motions to sever offenses. *Id.*

**b. Timing of State's Motion.** A prosecutor's motion for severance of defendants may be granted only before trial unless the motion is consented to by the defendant during trial. G.S. 15A-927(c)(2).

**3. Action on Court's Own Motion.** The court may deny joinder of defendants before trial on its own motion if a denial of joinder could be obtained by a motion of the defendant or prosecutor. G.S. 15A-927(e). The Court of Appeals has held that a trial court may order joinder of defendants on its own motion. See *State v. Cottingham*, 30 N.C. App. 67, 69 (1976) (the trial judge may direct that criminal cases be consolidated for trial when proper grounds for joinder exist and joinder will promote the ends of justice and facilitate the proper disposition of cases); *State v. Poindexter*, 68 N.C. App. 295, 298 (1984) (citing *Cottingham* for the proposition: "when grounds for joinder set forth in G.S. 15A-926(b)(2) exist . . . the court can order a joinder on its own initiative").

- E. Capital Sentencing.** When two or more defendants are charged with a capital crime, the State may move to join the defendants for trial and sentencing. Special considerations apply when codefendants are sentenced together by a jury. The Eighth Amendment requires that capital sentencing be an individualized process that focuses on the unique character and record of the person being sentenced. See *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976). The North Carolina Supreme Court has permitted the joinder of defendants for capital sentencing “with the caveat that there be individualized consideration given to each defendant’s culpability.” *State v. Oliver*, 309 N.C. 326, 366 (1983). See also *State v. Golphin*, 352 N.C. 364, 462 (2000) (defendant failed to show that he did not receive individualized consideration in capital sentencing hearing held jointly with his brother).

For summaries of cases involving joinder or severance of defendants at a capital trial or sentencing hearing, see JEFFREY B. WELTY, *NORTH CAROLINA CAPITAL CASE LAW HANDBOOK* (3d ed. 2013).

- IV. Jury Instructions.** There are no specific pattern jury instructions concerning joinder or severance issues. However, for an example of an instruction limiting the admission of evidence to one defendant in a multiple defendant trial, see Section III.C.

Pattern jury instructions involving multiple defendants that may be useful in multiple defendant trials include: (1) Multiple Defendants—One Defendant Pleads Guilty during Trial ([N.C.P.I. Crim. 101.41](#)); and (2) Multiple Defendants Charged With the Same Crime—Guilt Determined Separately ([N.C.P.I. Crim. 101.42](#)).