

## ACCESSORY – FACT

### **Defendant Was Lawfully Convicted of Accessory After Fact of Assault With Deadly Weapon With Intent to Kill Inflicting Serious Injury Even Though Perpetrator of Assault Pled Guilty to Assault With Deadly Weapon Inflicting Serious Injury**

*State v. McGee*, \_\_\_ N.C. App. \_\_\_, 676 S.E.2d 662 (2 June 2009).

The court ruled that the defendant was lawfully convicted of accessory after the fact of assault with a deadly weapon with the intent to kill inflicting serious injury even though the perpetrator of the assault pled guilty to assault with a deadly weapon inflicting serious injury. The court noted that if the perpetrator had been acquitted of all types of assaults, then the accessory after the fact could not be convicted.

### **(1) Double Jeopardy Prohibits Convictions of Both Accessory After Fact of First-Degree Murder and Accessory After Fact of First-Degree Kidnapping When Jury Could Have Found That Accessory After Fact of First-Degree Murder Was Based Solely on Kidnapping Under Felony Murder Rule**

### **(2) Trial Court Erred in Ordering Restitution to Murder Victims' Families When Defendant Was Convicted of Accessory After Fact of First-Degree Murder and There Was No Direct and Proximate Causal Link Between Defendant's Actions and Harm Cause to Victims' Families**

*State v. Best*, \_\_\_ N.C. App. \_\_\_, 674 S.E.2d 467 (3 February 2009).

The defendant was convicted of three counts of accessory after the fact to first-degree murder and three counts of accessory after the fact to first-degree kidnapping, based on assistance to others who had killed three people. (1) The court ruled, relying on *State v. Gardner*, 315 N.C. 444 (1986), that double jeopardy prohibited convictions of both accessory after fact of first-degree murder and accessory after fact of first-degree kidnapping when the jury could have found that accessory after fact of first-degree murder was based solely on kidnapping under felony murder rule. The jury's verdict did not indicate whether it found the first-degree murder element based on premeditation and deliberation or felony murder based on first-degree kidnapping, or both. The court arrested judgment on the defendant's convictions of accessory after the fact to first-degree kidnapping. (2) The court examined the evidence in this case and ruled that the trial court erred in ordering restitution to the murder victims' families when there was no direct and proximate causal link between the defendant's actions and harm cause to victims' families.