

ACTING IN CONCERT

- (1) Defendant's Statements Were Not Inadmissible Under Rule 410**
- (2) Convictions Are Reversed Due to Absence of Acting-in-Concert Instruction**
- (3) Concurrent Habitual Felon Sentences for Convictions at Same Trial Are Authorized**
- (4) Sentence May Have Been Improperly Based on Defendant's Failure to Accept Pretrial Plea Offer**

State v. Haymond, ___ N.C. App. ___, ___ S.E.2d ___ (6 April 2010).

The defendant was convicted of multiple offenses involving break-ins, larcenies, and possession of stolen property concerning multiple victims. He received ten consecutive habitual felon sentences. The court ruled: (1) the defendant's statements during a pretrial hearing were not inadmissible under Rule 410 (statement made by defendant during plea discussions) because they were made during the defendant's various requests to the trial court and the defendant did not subjectively believe he was negotiating a plea with the prosecutor or with the prosecutor's express authority; (2) when the trial court did not instruct the jury on the theory of acting in concert and the evidence did not show that the defendant committed the offenses himself, the defendant's convictions must be reversed; (3) the trial court has the authority to impose concurrent habitual felon sentences for convictions that occur at the same trial; and (4) the trial court's statements at the sentencing hearing raised an inference that the trial court based its sentences at least in part on the defendant's failure to accept the state's plea offer at a pretrial hearing, and thus a new sentencing hearing must be held.

- (2) Sufficient Evidence to Convict Defendant of Rape Based on Acting in Concert Theory When Forcible Sexual Intercourse Was Committed by Accomplice**

State v. Sapp, ___ N.C. App. ___, 661 S.E.2d 304 (3 June 2008).

(2) The court ruled, distinguishing *State v. Bellamy*, 172 N.C. App. 649 (2005), that there was sufficient evidence to convict the defendant of rape based on the acting in concert theory when forcible sexual intercourse was committed by the defendant's accomplice. The defendant's rapes of the victim were committed during the course of the burglary and robbery, and the later rape of the victim by the accomplice was a natural or probable consequence of the robbery.

- Trial Judge Did Not Err in Giving Acting-in-Concert Instruction to Jury (Which Had Not Been Included in Initial Instructions) After It Had Reported That It Was Divided 11-1 on Verdict**

State v. Williams, ___ N.C. App. ___, 648 S.E.2d 896 (21 August 2007).

The defendant was convicted of first-degree murder based on the felony murder theory, with the underlying felony being armed robbery. Evidence showed that another person was involved in committing the offense. In the original jury instructions, the trial judge did not give an instruction on acting in concert. After the jury reported that it was divided 11-1 on a verdict (without indicating whether

the vote was for conviction or acquittal), the judge gave the instruction. The court ruled that the judge properly gave the instruction under G.S. 15A-1234(a)(4), and by doing so did not impermissibly coerce a verdict.

Homicide Felony Murder -- Motion to Dismiss -- Sufficiency of Evidence -- Acting in Concert -- Trafficking in Cocaine While Also Possessing Deadly Weapon

State v. Herring 176 N.C. App. 395 (2006).

The trial court did not err by denying defendant's motion to dismiss the charge of felony murder based on the theory of acting in concert even though defendant contends there was insufficient evidence to support the underlying felony of trafficking in cocaine by possession of more than 400 grams of cocaine while also possessing a deadly weapon, because: 1) defendant may not have intended to join his cousin in shooting and killing the victim on 18 August 2003, but defendant's intent is of little importance under the circumstances of acting in concert since as long as defendant joined with his cousin in committing a crime, he is responsible for all other crimes committed in a single transaction that are in furtherance of the common purpose or plan; 2) the common plan in the instant case was to obtain or facilitate the possession of cocaine, and evidence taken in the light most favorable to the State formed the basis that defendant and his cousin acted together to possess, or attempt to possess, the victim's cocaine; 3) the requisite common purpose for acting in concert is not necessarily the intent to commit the crime charged, rather it is sufficient if the crime charged is a natural occurrence of, or flows from a common criminal purpose; 4) defendant's knowledge that his cousin had a gun is irrelevant so long as the cousin killed the victim while possessing or attempting to possess the drugs in the apartment which the State substantially established was the common purpose; and 5) the evidence in the light most favorable to the State shows that the victim was shot and killed within moments of the cousin stepping into the apartment with the gun to complete his drug transaction.

Sexual Offenses -- First-degree -- Failure to Instruct on Acting in Concert or Aiding and Abetting -- Failure to Show Defendant Personally Employed or Displayed Dangerous or Deadly Weapon

State v. Roberts, 176 N.C. App. 159 (2006).

The trial court erred by concluding that the evidence was sufficient to permit a reasonable juror to find beyond a reasonable doubt that defendant committed first-degree sexual offense, and the case is remanded for entry of judgment against defendant for second-degree sexual offense, because: 1) the jury was instructed it could find defendant guilty of first-degree sexual offense only if he employed or displayed a dangerous or deadly weapon; 2) without an instruction on acting in concert or the theory of aiding and abetting, the evidence must support a finding that defendant personally employed or displayed a dangerous or deadly weapon in

the commission of the sexual offense; 3) there was no evidence at trial that defendant ever, personally, employed or displayed a dangerous weapon during the time he was in the victim's apartment; 4) all the testimony at trial established that another man held the shotgun throughout the incident; and 5) the jury's verdict is recognized as a verdict of guilty of second-degree sexual offense.

Sexual Offenses -- First-Degree -- Codefendant's Act During Robbery -- Acting in Concert -- Sufficiency of Evidence

State v Bellamy, 172 N.C. App. 649 (2005).

The trial court erred by denying defendant's motion to dismiss the charge of first-degree sexual offense committed during the course of a robbery of a fast food restaurant under the theory of acting in concert, because: 1) based on the facts of this case, a sex offense committed in the course of a robbery of a public business by a codefendant was not a natural or probable consequence of the robbery; and 2) a reasonable person in defendant's position would not have foreseen that the codefendant would take the time to deviate from the planned robbery to commit this type of bizarre sexual assault on the victim.

Homicide -- First-Degree Murder – Instruction -- Acting in Concert

State v. Windley, 173 N.C. App. 187 (2005)

The trial court erred by instructing the jury on acting in concert with respect to the charge of first-degree murder, and defendant is entitled to a new trial on this charge, because: 1) the State presented evidence tending to show that defendant was the perpetrator of the acts; 2) the State presented no evidence that defendant acted with others in killing the victim or that anyone other than defendant shot and killed the victim; and 3) although defendant was found guilty of first-degree murder on the basis of felony murder as well as premeditation and deliberation, the trial court erroneously informed the jury that it could convict defendant of first-degree murder on the basis of acting in concert in its instructions under both theories.

Homicide -- Alternative Theories -- Aiding and Abetting -- Acting in Concert

State v. Roache, 358 N.C. 243 (2004).

The trial court did not err in a multiple murder prosecution by overruling defendant's objection to the State's use of two alternative theories of guilt including aiding and abetting in connection with premeditation and deliberation, and acting in concert with regard to felony murder, because: 1) defendant's argument that the two theories utilized by the State are mutually exclusive has no merit, and in any given case, both theories may be proven by the same evidence; and 2) defendant failed to show prejudice.

Aiding and Abetting -- Acting in Concert -- Motion to Dismiss -- Sufficiency of Evidence -- Constructive Presence

State v. Tirado, 358 N.C. 551 (2004).

The trial court did not err by denying defendant's motion to dismiss the charges for the substantive offenses of attempted first-degree murder, assault with a deadly weapon with intent to kill inflicting serious injury, kidnapping, and robbery with a dangerous weapon committed against one of the victims based on the theory of aiding and abetting or acting in concert even though defendant contends that he was not physically present for these crimes, because: 1) the State presented sufficient evidence to allow a rational juror to conclude that defendant joined with one or more persons in the purpose to kidnap, rob, assault with a deadly weapon, and attempt to murder the victim; and 2) defendant was constructively present when these crimes were carried out.

Robbery -- Dangerous Weapon -- Instructions -- Acting in Concert

State v. Johnson, 164 N.C. App. 1 (2004).

The trial court did not err in a robbery with a dangerous weapon, attempted robbery with a dangerous weapon, and conspiracy to commit robbery with a dangerous weapon case by failing to instruct the jury in accordance with defendant's request concerning the theory of acting in concert, because: 1) **the jurors were instructed that they need not find that defendant had intent to use a dangerous weapon in order to be convicted of robbery with a dangerous weapon, but that they need only find that defendant acted in concert to commit robbery and that his codefendant used the dangerous weapon in pursuance of that common purpose to commit robbery;** and 2) the instruction was a correct statement of law.

Robbery -- Dangerous Weapon -- Motion to Dismiss -- Sufficiency of Evidence -- Acting in Concert

State v. Jones, 157 N.C. App. 110 (2003).

The trial court did not err by denying defendant's motion to dismiss the charge of robbery with a dangerous weapon, because: 1) defendant was convicted under the theory of acting in concert to commit the armed robbery; 2) a co-participant testified that he, defendant, and another person all participated in the planning and execution of the robbery; 3) the co-participant testified that he told defendant and another person that he had a gun before the robbery; 4) the co-participant testified that defendant entered the store first to assess conditions within the store, returned to report to the other two men, and defendant waited in the vehicle as the designated getaway driver; and 5) although defendant's evidence tended to

contradict the co-participant's testimony, contradictions and discrepancies must be resolved by the jury and do not warrant dismissal.

Homicide -- First-Degree Murder -- Acting in Concert -- Instruction

State v. Mann, 355 N.C. 294 (2002).

The trial court did not err by submitting to the jury an acting in concert instruction with respect to the charge of first-degree murder, because there was sufficient evidence that defendant and his wife acted in concert to perpetrate the chain of offenses against the victim when the evidence viewed in the light most favorable to the State reveals that: 1) both defendant and his wife were at their apartment at or near the time the victim was beaten and held against her will; 2) a witness testified that two cars, one resembling the victim's car, were on the same side of the bridge where the victim's body was later discovered; and 3) the murder weapon was found in the car defendant's wife had been driving.

Homicide -- Second-Degree Murder -- Acting in Concert -- Sufficiency of Evidence

State v. Lambert 149 NCA 163 (2002).

The trial court did not err by denying defendant's motion to dismiss the charge of second-degree murder based on the theory of acting in concert, because: 1) defendant assaulted the victim by throwing glass bottles at her from a close proximity; 2) although defendant argues that the two other co-participants' actions in beating the victim with a tree limb were a distinct act separate and apart from the initial bottle-throwing, the beating occurred immediately following the bottle-throwing and in the same location; 3) there was sufficient evidence from which a reasonable jury could conclude that these two acts, rather than being distinct and separate from one another, were part of a general assault on the victim and that the intensified assault by the two co-participants that culminated in the victim's death was a probable and natural consequence of the initial assault in which defendant actively participated; and 4) defendant afterwards accompanied the two co-participants to conceal evidence of the crime

Constitutional Law -- Double Jeopardy -- First-Degree Murder by Acting in Concert -- Solicitation to Commit Murder -- Conspiracy to Commit Murder -- Not a Lesser Included Offense

State v. Kemmerlin, 356 N.C. 446 (2002).

The trial court did not err in a first-degree capital murder case by failing to vacate the convictions of solicitation to commit murder and conspiracy to commit murder even though defendant asserts that both convictions merge with the conviction for first-degree murder by acting in concert and that punishment for both crimes allegedly violates double jeopardy, because: 1) the crime of solicitation requires counseling, enticing, or inducing another to commit a crime

whereas this element is not required for acting in concert; 2) acting in concert requires actual or constructive presence at the crime which is not an element present in the definition of solicitation; 3) regarding defendant's contention that her conspiracy conviction also merged based on her allegation that her presence at the scene of the murder was incidental and unnecessary, defendant was not only present at the scene of the murder but she also let the co-participant into her home knowing he was going to kill her husband and she also brought her husband into the room where he would be killed; 4) conspiracy is a separate offense from the substantive offense and therefore does not merge into the substantive offense; and 5) the requirement of an agreement which is an element of conspiracy is not a necessary element for murder by acting in concert.

Homicide - Murder - Acting in Concert - Victim Dead When Defendant's Shots Fired

State v. Cook, 334 N.C. 564 (1993) 433 S.E.2d 730 Page 565

The trial court did not err by denying defendant Smith's requested instruction in a prosecution for murder and for firing into occupied property where Defendant Smith contended that, if the evidence supported the to the jury by argued by the prosecutor, he could not have acted in concert in the killing of the victim because it is not criminal homicide to shoot a dead body. Given that the victim was mortally wounded during a volley of gunfire from defendants' firearms, the temporal order of the fatal shot by defendant Cook and other shots fired by defendant Smith, acting in concert with Cook, is immaterial; the underlying felony and the murder occurred in a time frame that can be perceived as a single transaction.

Homocide -- Murder -- Instructions -- Acting in Concert -- Evidence Sufficient

State v. Williams, 333 N.C. 719 (1993) 430 S.E.2d 888 Page 719

Homocide – Murder -- Assault -- Instructions -- Acting in Concert -- Evidence Sufficient

State v. Jefferies, 333 N.C. 501 (1993) 428 S.E.2d 150 Page 503

Assault -- Aggravated Assault -- Acting in Concert -- Codefendant Acquitted -- Inconsistent Verdicts Permissible

State v. Reid, 335 N.C. 647 (1994) 440 S.E.2d 776 Page 648

Defendant could properly be convicted of assault with a deadly weapon with intent to kill inflicting serious injury under the theory that he acted in concert with

the codefendant even though the codefendant was acquitted of that crime since inconsistent verdicts in the same trial are permissible.

Homicide -- First Degree Murder -- Actual or Constructive Presence -- Acting in Concert -- Sufficiency of Evidence

State v. Willis, 332 N.C. 151 (1992) 420 S.E.2d 158 Page 157

Homicide – Noncapital First Degree Murder -- Instructions -- Acting in Concert

State v. Taylor, 337 N.C. 597 (1994) ___ S.E.2d ___

There was sufficient evidence to support the trial court's instructions on acting in concert in a noncapital prosecution for first-degree murder where the evidence in the case would support a reasonable finding that the defendant was present and acting in concert with Johnny Beck as they picked up the victim to "party" with them and that the defendant and Beck formed a common purpose to murder Thomas after she had "partied" for some time at the defendant's expense and would not proceed with bargained-for sex acts.

Homicide -- First-Degree Murder -- Two Defendants -- Acting in Concert -- Evidence Sufficient

State v. Abraham, 338 N.C. 315 (1994) ___ S.E.2d ___

The trial court did not err by denying defendant Abraham's motion to dismiss a charge of first-degree felony murder for insufficient evidence where the evidence would permit the jury to find that Foster, Hardin, Steve and Gaddy were walking to Foster's mother's house when they were accosted by defendants Abraham and Cureton on Lander Street; words were exchanged and both Abraham and Cureton began firing handguns; as Hardin and Foster ran away, Hardin's leg was grazed by a bullet; Hardin fell into some nearby bushes and watched Cureton fire in his direction and Abraham fire in Foster's direction; and Gaddy was found dead in the middle of Lander Street after the shooting with fatal gunshot wounds to his head and abdomen and another wound to the sole of his foot. Although defendant Abraham contended that the evidence was not sufficient to show that either he or someone acting in concert with him fired the fatal shots, the jury could reasonably infer that Abraham and Cureton were acting in concert when they accosted the other four men and began firing their weapons, the other four men were unarmed and ran when the shooting began, Cureton shot at and wounded Hardin, Abraham shot at Foster, and bullets fired during one of these assaults fatally wounded Gaddy while Gaddy was running away. Since the evidence supports the guilt of both defendants as to all of the felonious assaults, it makes no difference which of the felonious assaults is the underlying felony or which defendant actually fired the fatal shots or whether defendants intended that Gaddy be killed.

**Assault -- Assault with Deadly Weapon with Intent to Kill Inflicting Serious Injury -
- Acting in Concert -- Sufficiency of Evidence**

State v. LittleJohn, 340 N.C. 750 (1995) ___ S.E.2d ___

The trial court did not err in denying defendant's motion to dismiss the charge of assault with a deadly weapon with intent to kill inflicting serious injury, since evidence that an accused went with an accomplice to a person's abode, helped the accomplice bind the occupants of the house, and then stood by while the person was stabbed is evidence from which a jury could conclude that the two people were acting in concert and that they both intended that the person be killed.

Homicide -- Acting in Concert -- Instructions -- Specific Intent of Defendant

State v. Straing, 342 N.C. 623 (1996) ___ S.E.2d ___

The trial court's instructions that the State was required to prove as an element of each of the crimes of first degree premeditated and deliberated murder, armed robbery, and first-degree kidnapping that "defendant, or someone with whom he was acting in concert" had the specific intent to commit the crime erroneously allowed the jury to convict defendant of those crimes on the theory of acting in concert without requiring the State to establish that defendant had the specific intent to commit those crimes, and defendant is entitled to a new trial on each of those charges. Defendant is also entitled to a new trial on a felony murder charge because the predicate felony which supported that theory was obtained without the State being required to establish defendant's specific intent.

**Homicide -- First-Degree Murder -- Acting in Concert -- Constructive Presence --
Sufficiency of Evidence**

State v. Barrett, 343 N.C. 164 (1996) 469 S.E.2d 888

**Homicide -- Manslaughter Premised on Acting in Concert -- Lesser Offense of
Second-Degree Murder**

State v. McCoy, 122 N.C. App. 482 (1996) 470 S.E.2d 542

There was no merit to defendant's contention that voluntary manslaughter cannot be a lesser included offense of second-degree murder when premised on the doctrine of acting in concert.

**Homicide -- Indictment for Murder -- Acting in Concert Theory -- Conviction as
Accessory Indictment Sufficient**

State v. Westbrooks, 345 N.C. 43 (1996) 478 S.E.2d 483

An indictment for acting in concert to commit murder supported a verdict of first-degree murder on an accessory-before-the-fact theory. An indictment must allege all of the essential elements of the crime sought to be charged but allegations beyond the essential elements are irrelevant and may be treated as surplusage. Moreover, the purposes of an indictment include giving notice of the charge against defendants so that they may prepare their defense and be in a position to plead double jeopardy

Homicide -- Capital Murder Instructions -- Acting in Concert -- Blankenship Overruled

State v. Barnes, 345 N.C. 184 (1997) ___ S.E.2d ___

The trial court did not err in a capital prosecution for first-degree murder in its instruction to the jury on the doctrine of acting in concert with regard to premeditated and deliberate first-degree murder. Although the defendants argued that this instruction violated *State v. Blankenship, 337 N.C. 543*, by permitting the jury to find defendants guilty of premeditated and deliberate first-degree murder without specific findings that they individually possessed the requisite mens rea to commit that crime, *Blankenship, State v. Reese, 319 N.C. 110*, and their progeny are overruled to the extent that they are inconsistent with this opinion. The correct statement of the doctrine of acting in concert in this jurisdiction is that enumerated in *State v. Westbrook, 279 N.C. 18*, and *State v. Erlewine, 328 N.C. 626, 19*. Constitutional Law § 166 (NCI4th) **capital murder instructions acting in concert Blankenship overruled not ex post facto in this case**. The return to the acting in concert instructions as enumerated in *State v. Erlewine, 328 N.C. 626*, rather than *State v. Blankenship, 337 N.C. 543*, did not act as an ex post facto law in this capital first-degree murder prosecution because the crimes here were committed on 29 October 1992, defendants were sentenced on 10 March 1994, and the certification date for *Blankenship* was 29 September 1994. The law on acting in concert at all relevant times during the disposition of this case was the rule as stated in *Erlewine*, which is reaffirmed.

Homicide -- First-Degree Murder -- Acting in Concert -- Sufficiency of Evidence

State v. Gaines, 345 N.C. 647 (1997)

The trial court did not err by denying defendant Harris's motion to dismiss a charge of first-degree murder on the grounds of insufficient evidence where defendant contended that the evidence was insufficient to show that he was acting in concert in that he was not present at the scene, did not commit any of the acts, and did not share a common plan. The evidence was conflicting as to Harris's actual presence, but the State presented as evidence the victim's dying identification of his killers and testimony from a witness who saw three black

men run from the scene, and defendant presented evidence that he either remained at the car or walked some distance with the shooter but not all the way to the scene. This is sufficient to support a finding that defendant was either actually or constructively present. The evidence was also sufficient to show that defendant shared the plan to shoot the victim in that defendant encouraged and aided the shooter; provided him with a shotgun; accompanied him to the area and either remained at the car or accompanied him as far as the parking lot at the scene; left with the shooter and another man after the killing; and took possession of the murder weapon and hid it.

Homicide -- First-Degree Murder -- Sufficiency of Evidence -- Acting in Concert

State v. Dickens, 346 N.C. 26 (1997)

The trial court did not err by instructing the jury in a first-degree murder prosecution that it could convict defendant on the basis of malice, premeditation, and deliberation under the theory of acting in concert where the evidence indicated that an accomplice, Woods, initially told defendant a story about being able to break into the victim's trailer without being caught; defendant suggested that they break in and steal something; they drove to the victim's trailer together, pried open window panes to the back door, and entered; and, when the victim discovered them, Woods grabbed her hands and forced her into the bedroom, whereupon defendant delivered the fatal blows. This evidence sufficiently indicates that the two men were acting together pursuant to a common plan.

Homicide -- First-Degree Murder -- Acting in Concert -- Sufficiency of Evidence

State v. Bishop, 346 N.C. 365 (1997)

The trial court did not err by instructing the jury that it could find defendant guilty of first-degree murder under the theory of acting in concert where the State's evidence tended to show that defendant asked her boyfriend to help her "rough up" the victim, that the boyfriend went to the home of the victim's mother with the intent of helping defendant assault the victim, and that defendant and her boyfriend acted together to beat and stab the victim to death; defendant provided her boyfriend with a wooden baton and knife that the boyfriend used to beat and stab the victim, defendant personally beat the victim, and defendant personally inflicted the stab wounds that caused the victim's death; defendant started a fire after killing the victim, took the lead in concocting and refining an "alibi story," and urged her boyfriend to "stick" to this story, and the boyfriend helped defendant dispose of evidence and made statements to law officers that he and defendant were together at the time of the killing. The evidence was sufficient to show that defendant acted with premeditation and deliberation and to show not only that the victim's murder was a natural or probable consequence of the joint purpose of defendant and her boyfriend to commit a crime, but that defendant and her boyfriend acted together pursuant to a joint purpose to murder the victim.

Homicide -- Acting in Concert - Specific Intent -- Instructions

State v. Bonnett, 348 N.C. 417 (1998)

The rule stated for acting in concert for specific intent crimes stated in *State v. Blankenship, 337 N.C. 543 (1994)*, applies to defendant's first-degree murder trial since the crime and judgment occurred subsequent to the decision in *Blankenship* and prior to the decision in *State v. Barnes, 345 N.C. 184 (1997)*. The trial court properly instructed the jury on the law of acting in concert in accordance with *Blankenship* where the court emphasized to the jury that in order to find defendant guilty of premeditated and deliberate murder, the jury must find that defendant specifically intended to kill the victim.

Homicide -- First-Degree Murder -- Acting in Concert -- Instructions

State v. Anderson, 350 N.C. 152 (1999)

There was no plain error in a capital prosecution for first-degree murder in the court's instruction on acting in concert where defendant contended that the instruction was improper under *State v. Blankenship, 337 N.C. 543*, but the crimes in this case occurred in August 1994 and *Blankenship* is inapplicable. Moreover, defendant's argument that the instructions given by the court did not clearly explain to the jurors that they must find that defendant's common purpose with her boyfriend was to commit each and every crime charged fails as to felonious child abuse, felony murder based on felonious child abuse, and first-degree murder because those crimes do not require specific intent. As to first-degree murder based on premeditation and deliberation, defendant concedes that the trial court's preliminary instructions required the jurors to find that defendant herself must have had the specific intent to kill and the court later repeated the instruction on premeditated and deliberate murder, again requiring the jurors to find that defendant had the specific intent to kill.

Homicide -- Felony Murder -- Specific Intent for Underlying Felonies -- Blankenship Rule Applicable

State v. Rivera, 350 N.C. 285 (1999)

Because two murders with which defendant was charged occurred after the decision of *State v. Blankenship, 337 N.C. 543 (1994)*, but before the non-retroactive decision of *State v. Barnes, 345 N.C. 184 (1997)*, the acting in concert rule applied in *Blankenship* applies to defendant's trial. Therefore, the trial court must charge the jury in defendant's new trial that before it can render a verdict of guilty of felony murder on the basis of defendant's acting in concert with regard to the underlying specific intent felonies of armed robbery and kidnapping, it must first find that defendant himself possessed the requisite specific intent.

Instructions -- Acting in Concert

State v. Hasty, 133 N.C. App. 563 (1999)

There was no plain error in a prosecution of two defendants for armed robbery and attempted armed robbery where the State's evidence tended to show that defendants were acting in concert and each defendant contends that the instructions would allow the jury to convict both defendants if either committed the robbery. It is unlikely that the trial transcript accurately reports the statement made by the court, particularly because the court gave counsel an opportunity to object or offer corrections shortly after making the statement in question and all the attorneys answered in the negative. Furthermore, taking the entire initial charge and the restatement after a question as a whole, a rational juror would not have been misled.

Constitutional Law -- Self-Incrimination -- Robbery -- Acting in Concert -- Codefendant Not Required To Testify

State v. Stanfield, 134 N.C. App. 685 (1999)

The trial court did not err in a robbery case when it did not allow defendant to call his codefendant to testify after the codefendant pled guilty outside the presence of the jury and claimed he would invoke his Fifth Amendment privilege not to incriminate himself if called as a witness because defendant did not proffer the evidence he sought to elicit from his codefendant and merely wanted the jury to speculate. In addition, the fact that defendant was being tried on the theory of acting in concert meant the codefendant's admission of his involvement would not exonerate defendant.

Homicide -- Second-Degree Murder -- Acting in Concert -- Common Plan -- Sufficient Evidence

State v. Lundy, 135 N.C. App. 13 (1999)

The trial court did not err by denying defendants' motion to dismiss the second-degree murder charge based on the theory of acting in concert because the evidence viewed in the light most favorable to the State reveals that defendants engaged in a common plan to shoot the victim relating to their joint enterprise of selling crack cocaine.

Constitutional Law -- Double Jeopardy -- Acting in Concert -- Jury Instructions

State v. Graham, 145 N.C. App. 483 (2001)

The trial court committed plain error in a first-degree rape, first-degree sexual offense, and taking indecent liberties case by its jury instructions on those counts where defendant was convicted on the theory of acting in concert with his co-participant, because: 1) use of the pattern jury instruction without amendments allowed the jury to convict defendant based on acting in concert regardless of whether the jury believed that defendant had acted together with his co-participant as the co-participant committed the offense, or whether defendant committed the offense acting alone; and 2) since defendant was separately convicted for all of the same offenses based on his own actions, the instructions allowed defendant to be convicted twice for the same offense in violation of his right to be free from double jeopardy. U.S. Const. amends. V and XIV; N.C. Const. art. I, § 19.