

CHILD ABUSE

(2) Expert Was Properly Permitted to Testify That Victim and Other Children Were Subjected to Ritualistic Child Abuse, Sadistic Child Abuse, and Torture

State v. Paddock, ___ N.C. App. ___, ___ S.E.2d ___ (1 June 2010).

The defendant was convicted of first-degree murder (based on torture) and felonious child abuse inflicting serious bodily injury involving the death of one of her children. (1) The defendant's other children were allowed to testify how the defendant physically abused them in an effort to control their behavior in a similar manner to the defendant's abuse of her son, the murder victim. The court ruled, relying on *State v. Anderson*, 350 N.C. 152 (1999), that the trial court did not err under Rule 404(b) and Rule 403 in admitting this testimony to show the defendant's intent, plan, scheme, system or design to inflict cruel suffering, as well as malice and lack of accident. (2) The court ruled that the trial court did not err in permitting the state's witness, an expert in developmental and forensic pediatrics, to testify that the victim and other children were subjected to ritualistic child abuse, sadistic child abuse, and torture. The court rejected the defendant's argument that the testimony improperly opined on the testifying children's credibility, and the expert's use of the word "torture" was potentially misleading because it differed from the legal definition. The expert testified that she used the term "torture" based on her medical expertise, not its legal meaning.

Sufficient Evidence to Support Defendants' Convictions of Felony Child Abuse

State v. Parker, ___ N.C. App. ___, 651 S.E.2d 377 (21 August 2007).

The court ruled that there was sufficient evidence to support the two defendants' convictions of felony child abuse. Expert medical testimony established: the injuries to the one-month-old infant were (1) intentional; and (2) occurred within six to 24 hours of 8:00 p.m., December 25, 2002. Two state's witnesses testified that they left the defendants' house at approximately 11:00 p.m., December 24, 2002, and the infant was fine. The defendants went to sleep and allegedly discovered the infant's injuries during the morning of December 25, 2002. The court noted that there was sufficient evidence to establish that the infant's injuries occurred between 11:00 p.m., December 24, 2002, and 2:29 p.m., December 25, 2002, when the defendants took the infant to the hospital, and the infant was under the sole care and supervision of the defendants during that time. In addition, there was evidence that both defendants altered accounts they provided to investigators and doctors treating the infant.

Sufficient Evidence to Prove Defendant Inflicted Injuries to Child in Trial of Felony Child Abuse Inflicting Serious Bodily Injury

State v. Wilson, 181 N.C. App. 540, 640 S.E.2d 403 (6 February 2007).

The defendant was convicted of felony child abuse inflicting serious bodily injury involving her twenty-three-month old child. The court ruled that there was sufficient evidence to prove the defendant inflicted the injuries. The defendant

had exclusive custody of the child when the injuries were sustained. The treating doctors and medical experts agreed that the injuries were not accidental, but rather intentionally inflicted. The defendant did not present rebuttal experts. The defendant during her testimony often changed her account of the cause of the injuries and also contradicted herself.

Child Abuse And Neglect--Criminal Abuse--Sufficiency Of Evidence

State v. Romero, 164 N.C. App. 169 (2004)

The trial court did not err by denying defendant's motion to dismiss a charge of felony child abuse for insufficient evidence of serious injury. Whether an injury is serious is a question for the jury; here, the evidence established that defendant hit his one-year old son at least once with a belt during an assault on his wife, the child cried after being hit, there was a visible bruise on his head, a deputy and a social worker testified about the bruise, and photographs of the bruise were admitted for the jury to observe. N.C.G.S. § 14-318.4(a).

Child Abuse And Neglect--Felony Child Abuse--Motion To Dismiss--Sufficiency Of Evidence

State v. Liberato 156 N.C. App. 182 (2003)

The trial court did not err by denying defendant's motion to dismiss the charge of felony child abuse inflicting serious injury under N.C.G.S. § 14-318.4(a), because: (1) when an adult has exclusive custody of a child for a period of time during which the child suffers injuries that are neither self-inflicted nor accidental, there is sufficient evidence to create an inference that the adult intentionally inflicted those injuries; (2) two doctors testified in their expert opinion that the child's injuries were intentionally inflicted and the amount of force required to cause such injuries was greater than that resulting from the child falling off either a mattress or chair which was the explanation given by defendant; and (3) defendant testified that the child was in defendant's sole custody the entire time during which the child's injuries were sustained.

Child Abuse And Neglect--Felonious Child Abuse--Motion To Dismiss--Sufficiency Of Evidence--Serious Physical Injury

State v. Williams, 154 N.C. App. 176 (2002)

The trial court did not err by denying defendant's motion to dismiss at the close of all evidence the charge of felonious child abuse under N.C.G.S. § 14-318.4(a) based on alleged insufficient evidence of a serious physical injury after defendant struck his eight-year-old daughter on the buttocks with a board multiple times while disciplining her for perceived misbehavior, because: 1) there is no requirement that an injury require immediate medical attention in order to be a

serious physical injury; 2) conflicts in the evidence as to the minor child's level of activity and the extent, if any, to which she appeared to be in pain after the alleged assault are for resolution by the jury; and 3) the evidence was sufficient for the jury to reasonably infer that the injury inflicted by defendant caused the minor child great pain and suffering.

Child Abuse And Neglect--Defendant As Perpetrator--Sufficiency Of Evidence

State v. Chapman 154 N.C. App. 441 (2002)

The State presented evidence in a felonious child abuse inflicting serious bodily injury prosecution sufficient for the jury to infer that defendant was the individual who intentionally abused the child where the evidence tended to show **that defendant provided exclusive care to the child while the child's mother was at work; the child was injured during the time she was in defendant's care;** and the injuries resulted in the removal of part of the child's pancreas, a perforation in his small intestine, blood clots, severe shock, injury to his bladder and kidneys, and a contusion to his liver.

Child Abuse And Neglect -- Felony Child Abuse -- Assault With A Deadly Weapon Inflicting Serious Injury -- Intentionally Kicking Child -- Motion To Dismiss -- Sufficiency Of Evidence

State v. Carter 153 N.C. App. 756 (2002)

The trial court did not err in a felony child abuse and assault with a deadly weapon inflicting serious injury case by denying defendant's motion to dismiss based on alleged insufficient evidence to prove that defendant intentionally kicked the minor child victim, because: 1) while the statement "my daddy kicked me" standing alone is insufficient to prove intent, the expert testimony presented indicated the minor child had sustained an extremely unusual severe and traumatic injury consistent with having been kicked; and 2) as the child's injury was the result of a high-energy impact equivalent to the force sustainable in a car wreck, it is reasonable to infer the injury was not accidental in nature but was the result of an intentional kick.

Homicide - Death Of Child - Shaking And Blunt Force Injuries - Malice

State v. Smith, 355 N.C. 268 (2002)

A decision of the Court of Appeals holding that evidence on the issue of malice was not substantial enough to withstand defendant's motion to dismiss a charge of second-degree murder of his two-year old stepdaughter was reversed for the reasons stated in the dissenting opinion in the Court of Appeals that evidence that injuries to the child's head and brain were caused by violent shaking and a blunt force injury to the head was sufficient to support the jury's conclusion that

defendant acted with malice and to sustain defendant's conviction of second-degree murder.

Homicide -- First-Degree Murder -- Felony Child Abuse -- Motion To Dismiss -- Sufficiency Of Evidence -- Caretaker

State v. Carrilo 149 N.C. App. 543 (2002)

The trial court did not err by denying defendant's motion to dismiss the charge of first-degree murder and by instructing the jury on the felony murder rule with child abuse as the underlying felony even though defendant contends the State failed to prove that defendant was a parent, provider of child care to the child, or supervisor of the child as required by N.C.G.S. § 14-318.4(a), because: (1) there was substantial evidence that defendant provided supervision for the minor child within the meaning of N.C.G.S. § 14-318.4(a) since defendant was living with the child's mother and the child at the time of the child's death; (2) the evil the legislature intended to suppress by the felony child abuse statute is the intentional infliction of serious injury upon a child who is dependent upon another for his care or supervision, and the minor victim was dependent upon defendant for the minor's care or supervision; and (3) contrary to defendant's assertion, the testimony from an expert witness for the State did not negate defendant's guilt.

Child Abuse And Neglect - Dispositional Hearing - Miranda Rights

In Re Pittman, 149 N.C. App. 756 (2002)

The trial court did not err by denying defendant's motion to suppress a mother's statement to officers in a juvenile abuse and neglect dispositional hearing where the mother contended that the statement was obtained in violation of her Miranda rights. **While the mother may attempt to suppress her statement in any subsequent criminal proceeding, she is barred from doing so in this civil proceeding where the overriding consideration is protection of the child's interests.**

Homicide--First-Degree Murder--Felony Murder Rule--Felonious Child Abuse

State v. Krider 145 N.C. App. 711 (2001)

The trial court did not err by convicting defendant for the first-degree murder of her two-year-old child based on the felony murder rule using the underlying felony of felonious child abuse with the use of a deadly weapon, because there was substantial evidence that defendant, using her hands as a deadly weapon, intentionally shook and threw her child resulting in his serious physical injury which shows defendant purposely resolved to commit the underlying felony that formed the basis of the first-degree murder charge.

(1) Homicide--Second-Degree Murder--Shaken Baby Syndrome--Motion To Dismiss--Defendant As Perpetrator--Sufficiency Of Evidence

(2) Homicide--Second-Degree Murder--Shaken Baby Syndrome--Motion To Dismiss--Malice-- Sufficiency Of Evidence

State v. Smith, 146 N.C. App. 1 (2001)

(1) The trial court did not err in a shaken baby syndrome case by failing to grant defendant stepfather's motion to dismiss the charge of second-degree murder for the death of his wife's two-year-old daughter on the basis that there was allegedly insufficient evidence of defendant being the perpetrator of the offense, because the evidence taken in the light most favorable to the State reveals that: 1) defendant had the child in his exclusive care during the time period the injuries were sustained that resulted in the child's death; 2) the wife did not check on the child when she returned home from work or during the night, but the child was alive and conscious when the wife left the child to go to work that afternoon; 3) defendant admitted to an investigator that defendant consumed alcohol that evening and that he might have popped the child in the mouth and that he could have slapped her across the face; 4) defendant told the investigator that he had shaken the child on prior occasions; and 5) while defendant presented some evidence to show his wife abused the child and that there existed a possibility that his wife caused the child's death, this evidence was merely an alternative theory as to the identity of the perpetrator of the offense. (2) The trial court erred in a shaken baby syndrome case by failing to grant defendant stepfather's motion to dismiss the charge of second-degree murder for the death of his wife's two-year-old daughter based on the State's failure to present substantial evidence that defendant had the necessary malice and the case is remanded for sentencing and entry of judgment finding defendant guilty of involuntary manslaughter, because: 1) the State failed to present any direct evidence that defendant inflicted the lethal blow to the child's head with the degree of recklessness required to find malice; 2) the evidence failed to establish the cause of the child's head injury and whether the injury was the result of an intentional and willful act or the result of an accident; 3) the fact that defendant admitted to having physically disciplined the child that evening does not support a finding of malice; 4) the State failed to present evidence of previous acts of child abuse which might permit an inference of malice; and 5) defendant cooperated with police, appeared upset at the child's death, made the 911 call, and attempted to revive the child by administering CPR.

(1) Homicide -- Felony Murder -- Child Abuse -- Motion To Dismiss -- Sufficiency Of Evidence

(2) Homicide -- Deadly Weapon -- Hands

State v. Krider, 138 N.C. App. 37 2000

(1) The trial court did not err in denying defendant-mothers's motion to dismiss a first-degree murder charge, while committing felonious child abuse with a deadly weapon, because: 1) defendant admitted she shook the child victim and threw him down, and as a result, the child was seriously injured; and 2) the State presented substantial evidence that defendant intentionally assaulted the child on occasions prior to the assault which led to his death, showing the jury could infer defendant intentionally injured him on the day of his death. (2) The trial court did not err in denying defendant-mothers's motion to dismiss a first-degree murder charge, while committing felonious child abuse with the use of defendant's hands as a deadly weapon, because: 1) the size of both the actor and the victim are important factors in the determination of whether hands are deadly weapons; and 2) when a strong or mature person makes an attack by hands alone upon a small child, the jury may infer that the hands were used as deadly weapons.

(1) Homicide - First-Degree Murder - Sufficiency Of Evidence

(2) Evidence - Prior Bad Acts - Child Abuse - Intent

State v. Clark, 138 N.C. App. 392 (2000)

(1) The State's evidence showed that Budde was a **battered child** and died as a result of injuries inflicted by the defendant. Although the State's case centered around circumstantial evidence, taken in the light most favorable to the State, it was sufficient to withstand the defendant's motions to dismiss. (2) The trial court did not err in a first-degree murder case by admitting testimony of defendant's prior bad acts regarding her treatment of the minor victim. Here, since the defendant was charged with felony child abuse, her treatment of Budde was at issue and thus relevant; evidence of the way defendant had treated the child in the past was relevant where defendant. The defendant has failed to establish that the trial court's decision to admit this evidence was manifestly unsupported by reason (1) a defendant's shaking a baby and the baby's death by shaken baby syndrome are not the sole determinants of whether the State has produced sufficient evidence of malice to convict the defendant of murder in a shaken baby syndrome case.

(1) Evidence--Child Sexual Abuse--Prior Acts Against Victim--Common Plan Or Ongoing Scheme--Remoteness

(2) Evidence--Child Sexual Abuse--Physical Abuse Of Siblings And Pet--Victim's State Of Mind

State v. Thompson, 139 N.C. App. 299 (2000)

(1) The trial court did not err in a prosecution for first-degree statutory rape, taking indecent liberties, and other offenses by admitting alleged sexual acts committed against the victim 7 and 2 years before the first offense in this action. The evidence was admissible to show a common plan or ongoing scheme

whereby defendant would wait until the victim's mother was gone, send the siblings upstairs, and perform sexual acts against the victim. The acts were not too remote in time in that the evidence reflected a continuous pattern from the time the victim was 5 until the offenses alleged in this action; a five-year gap in continuity occurred because defendant had no opportunity to be alone with the victim during this time, not because the common plan or scheme had ceased. (2) The trial court did not err in a prosecution for first-degree statutory rape, indecent liberties, and other offenses by admitting evidence of defendant's prior physical abuse of the victim's siblings and the family cat, but only because the abuse was in the victim's presence and defendant specifically made her state of mind relevant. Evidence of physical abuse or abuse of animals in cases involving only sexual abuse should be scrutinized carefully by the trial judge.

(1) Homicide--first-degree murder--sufficiency of evidence

(2) Evidence--prior bad acts--child abuse--intent

State v. Clark, 138 N.C. App. 392 (2000)

(1) The trial court did not err in a first-degree murder case by denying defendant's motions to dismiss because the State's circumstantial evidence was sufficient to reveal that the minor victim was a battered child who died as a result of injuries inflicted by defendant. (2) The trial court did not err in a first-degree murder case by admitting testimony of defendant's prior bad acts regarding her treatment of the minor victim because: 1) past instances of mistreatment are admissible to show intent in a child abuse case; 2) defendant's treatment of the minor victim was relevant to the charge of felony child abuse; and 3) defendant has failed to establish that the admission of this evidence was manifestly unsupported by reason.

Homicide--Second-Degree Murder--Malice--Sufficiency Of Evidence

State v. Blue, 138 N.C. App. 404 (2000)

The trial court erred in denying defendant's motion to dismiss the charge of second-degree murder in a shaken baby syndrome case based on a failure to show malice, because: 1) a defendant's shaking a baby and the baby's death by shaken baby syndrome are not the sole determinants of whether the State has produced sufficient evidence of malice; 2) the evidence did not show the infant victim was shaken violently or vigorously, nor that she vomited, had bruises to the brain, suffered hemorrhaging in her lungs, or had multiple external injuries; 3) the facts do not show a particular animosity and wickedness of disposition, hardness of heart, cruelty, recklessness of consequences, and a mind utterly regardless of social duty and deliberately bent on mischief; and 4) the evidence is sufficient only to raise a suspicion or conjecture of malice.

Child Abuse And Neglect - Child Abuse - Involuntary Manslaughter - Sufficiency Of Evidence

State v. Fritsch, 351 N.C. 373 (2000)

The trial court properly denied defendant's motion to dismiss charges of involuntary manslaughter and felonious child abuse and the evidence supported defendant's convictions of involuntary manslaughter and misdemeanor child abuse, where there was evidence tending to show that the seven-year-old victim had cerebral palsy and was profoundly mentally retarded; the victim was absent from a developmental center for extended periods of time while in defendant's care and custody; the victim's weight dropped after these absences from the center and rose again after regular attendance; each time the victim returned to the center after extended absences, she had sores on her back and was dirty and unkempt; the DSS had twice substantiated neglect of the victim by defendant based upon observations of the victim's physical condition and defendant's continued failure to take the victim to a doctor for a physical examination; the victim's death was caused by "starvation malnutrition"; and there was no evidence that the victim could not digest and ingest food. Substantial evidence existed from which the jury could infer that defendant willfully, or through her culpable negligence, deprived the victim of food and nourishment and that the victim's death was caused by defendant's actions or inactions.

Child Abuse And Neglect--Felonious Child Abuse--Aiding And Abetting

State v. Noffsinger, 137 N.C. App. 418 (2000)

The trial court properly submitted felonious child abuse to the jury on a theory of aiding and abetting and did not err by instructing the jury on that theory in light of: defendant's admitted presence during the time when some of the injuries to her child occurred; the special duty she owed her child as a parent; and her failure to intervene or take immediate action following the injuries. A reasonable mind could determine that defendant consented to and contributed to the crime.

(1) Felonious Child Abuse And Involuntary Manslaughter - Admissible - Complaints Of Abuse - Injuries - Admissible

(2) Relevance - Prejudicial Impact - Child Abuse - Victim's Condition Worse Than Other Children

State v. Fritsch, 132 N.C. App. 262 (1999)

(1) The trial court did not abuse its discretion in a prosecution for felonious child abuse and involuntary manslaughter by denying defendant's motions in limine and allowing introduction of evidence pertaining to complaints of abuse or neglect of the victim by defendant and evidence pertaining to injuries suffered by the victim,

including diaper rash, bedsores, unclean or sanitary appearance, and insect bites. (2) The trial court did not err in a prosecution for felonious child abuse and involuntary manslaughter by allowing the State to present the testimony of a teacher, two social workers, and the director of a facility for children with disabilities that they had witnessed children with the victim's condition before but had never seen anyone in such poor condition as this victim.

(1) Indictment and Information - variance - child abuse - nature of injury - surplusage

(2) Minors - felonious child abuse - sufficiency of evidence

(3) Homicide - second-degree murder - child abuse - sufficiency of evidence

State v. Qualls, 130 N.C. App. 1 (1998)

(1) The trial court did not err by not dismissing a charge of felonious child abuse based on an alleged fatal variance between the indictment and the evidence where the indictment alleged that the victim suffered a subdural hematoma and the evidence tended to show an epidural hematoma. The indictment alleged the elements of the crime and the reference to a subdural rather than an epidural hematoma was surplusage and properly disregarded. (2) The trial court did not err by denying defendant's motion to dismiss a charge of felonious child abuse where the court noted that there was medical testimony of an intentional injury and that defendant had sole and exclusive care and custody of the child for some periods during the day during that time. (3) The trial court did not err by not dismissing a second-degree murder charge based upon insufficient evidence where defendant contended that evidence that he may have shaken the two-month-old child in an attempt to rouse him was insufficient to show malice, but there was medical testimony that the child's injuries were consistent with shaken baby syndrome, and there was other medical evidence of defendant previously inflicting a severe blow to the victim's head.

(1) Felonious Child Abuse - Evidence Sufficient

(2) Felony Murder - Based On Felonious Child Abuse - Evidence Sufficient

State v. Pierce, 346 N.C. 471 (1997)

(1) The trial court properly denied defendant's motion to dismiss a charge of felonious child abuse where the State's evidence tended to show that defendant was the victim's uncle, that he and his girlfriend had custody of the victim for three or four weeks prior to her death, that the victim was two and one-half years of age at the time of her death, and that defendant intentionally committed an assault upon the victim resulting in her death. (2) The trial court did not err by denying defendant's motion to dismiss a charge of felony murder based on

felonious child abuse where the evidence that defendant caused a small child's death by shaking her with his hands was sufficient for the jury to conclude that defendant committed felonious child abuse and that he used his hands as deadly weapons.