

FIFTH AMENDMENT

State Violated Defendant's Fifth Amendment Rights By Using Defendant's Silence as Substantive Evidence of Guilt

State v. Adu, ___ N.C. App. ___, 672 S.E.2d 84 (3 February 2009).

The court ruled, relying on *State v. Hoyle*, 325 N.C. 232 (1989), *State v. Ward*, 354 N.C. 231 (2001), and *State v. Shores*, 155 N.C. App. 342 (2002), that the state on cross-examination of the defendant and during jury argument violated the defendant's Fifth Amendment rights by using the defendant's silence as substantive evidence of guilt. (See the court's discussion of the facts in this case.)

Constitutional Law--right to confrontation--witness pled Fifth Amendment

State v. Hatcher, 156 NCA 391 (2003)

The trial court did not violate defendant's constitutional right to confrontation in a first-degree murder case by allowing a witness for the State to plead the Fifth Amendment during cross-examination regarding the witness's alleged murder of another victim in an unrelated matter, because: (1) the question did not ask about the charge against the witness, but sought to elicit specific and possibly incriminating facts about a murder for which the witness had yet to be tried and which was completely unrelated to this case; and (2) defendant was not prevented from exploring the issues of bias and motive to fabricate based on the witness's agreement with the State since defendant cross-examined the witness and the witness testified extensively regarding the agreement he had reached with the State.

Contempt--civil--willful failure to comply--plaintiff's invocation of Fifth Amendment right

Mckillop v. Onslow County, 139 N.C. App. 53 (2000)

The trial court did not err in finding that plaintiff willfully failed to comply with an injunction permanently enjoining plaintiff from operating her two adult or sexually-oriented businesses in violation of a county's ordinance, that plaintiff confirmed she knew she was violating the ordinance and injunction, and that she failed to show cause as to why she should not be held in civil contempt, because: (1) plaintiff admits she chose to invoke her Fifth Amendment right so as to not incriminate herself by testifying at trial, and thereby, she showed no cause why she should not be adjudged in contempt; (2) plaintiff by her refusal to present testimony chose to abandon her claim that she was not in contempt of the trial court's order; and (3) the record is replete with evidence that plaintiff willfully and with stubborn disobedience failed to comply with and knowingly violated the injunction against her.

Constitutional Law § 355 (NCI4th) - first-degree murder - Fifth Amendment privilege – asserted by codefendant after plea bargain

State v. Pickens, 346 N.C. 628 (1997)

The trial court did not err in a noncapital first-degree murder retrial by accepting an assertion of the Fifth Amendment privilege against self-incrimination from a codefendant whom defendant wished to present as a witness and who had been convicted of first-degree murder in the first trial but who pled guilty to second-degree murder after the first-conviction was remanded and who had been released from prison at the time of defendant's second trial. Although defendant contended that the trial court did not make sufficient findings regarding the codefendant's fear of future prosecution, the court conducted a voir dire, the possibility of perjury charges or federal charges was put forth by counsel as grounds upon which the privilege was asserted, and the court concluded that the possibility of perjury charges or federal prosecution constituted sufficient fear of future prosecution to justify the assertion of the privilege. Defendant lodged only a general objection, at no time asked for a more specific enunciation of the fear of future prosecution, and appeared in oral argument to concede the possibility of future federal prosecution.

Constitutional Law § 352 (NCI4th) - murder - codefendant - Fifth Amendment - assertion before jury - not required

State v. Pickens, 346 N.C. 628 (1997)

The trial court did not abuse its discretion by not requiring a proposed witness to assert his Fifth Amendment privilege against self-incrimination in the presence of the jury in a noncapital first-degree murder retrial where the proposed witness was a codefendant who had pleaded guilty to second-degree murder and been released after the remand and before this trial. The probative value of asserting the privilege in front of the jury was substantially less than in *State v. Thompson*, 332 N.C. 204, because the defendant here sought to have the codefendant take responsibility for firing the weapon that killed the victim but was tried under the theory of acting in concert, so that the factual possibility that defendant did not fire the weapon was immaterial. Moreover, the trial court allowed defendant to introduce a transcript of the codefendant's plea of guilty to murder, enabling defendant to present the substance of his desired evidence and to present it more effectively. The evidence was overwhelming that defendant and the witness had a common purpose to fire into an occupied dwelling, that shots were in fact fired into an occupied dwelling, and that the victim was killed as a direct result. Any error in not permitting defendant to place his witness on the stand was harmless.