

Homicide Felony Murder

Trial Court Committed Error by Consolidating for Judgment the Convictions of First Degree Murder and Robbery with a Dangerous Weapon When Jury did not Specify Whether Defendant was Guilty of First Degree Murder Based on Premeditation and Deliberation or Felony Murder.

State v. Blymer __ N.C. App. __, __ S.E.2d __, (July 6, 2010).

Defendant robbed victim of money and prescription pain pills then beat victim with baseball bat, killing him. Judgment for convictions of first degree murder and robbery with a dangerous weapon were consolidated. Defendant argues that the trial court committed error by consolidating for judgment the convictions where the jury did not specify whether it found defendant guilty of first-degree murder based on premeditation and deliberation or on felony murder. The jury found defendant guilty of first-degree murder and robbery with a dangerous weapon but did not specify upon which theory the murder conviction was premised. Court held that the crime of robbery with a dangerous weapon merged with that of the murder.

(1) When Defendant and Defense Counsel Reached Absolute Impasse Whether to Exercise Peremptory Challenge of Prospective Juror, Trial Court Erred in Not Permitting Defendant to Make Decision Instead of Defense Counsel

(2) Trial Court Did Not Err in Allowing Offense of Attempted Sale of Cocaine That Had Been Committed With a Firearm to Be Used as Underlying Felony Under Felony Murder Rule

State v. Freeman, __ N.C. App. __, 690 S.E.2d 17 (2 March 2010).

(1) The court ruled, relying on *State v. Ali*, 329 N.C. 394 (1991), that when the defendant and defense counsel reached an absolute impasse whether to exercise a peremptory challenge of a prospective juror, the trial court erred in not permitting the defendant to make the decision instead of defense counsel. (2) The court ruled that the trial court did not err in allowing the offense of attempted sale of cocaine that had been committed with a firearm to be used as the underlying felony under the felony murder rule. On April 8 and April 10, 2006, the defendant delivered cocaine to the victim, but payment was not made then. When the defendant sought payment on April 17 after phoning the victim in advance to tell her he was coming to collect the money, he shot and killed her. The court noted that the sales were not complete on April 8 and 10 because payment had not been made. The defendant's actions on April 17 constituted an attempt to complete the transactions of the sale of cocaine.

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

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. 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.

Trial Judge Did Not Err in Not Submitting Second-Degree Murder as Lesser Offense of First-Degree Felony Murder When Evidence of Armed Robbery Was Not in Conflict—Ruling of Court of Appeals Is Reversed

State v. Gwynn, 362 N.C. 334, 661 S.E.2d 706 (12 June 2008), reversing, 182 N.C. App. 343 (6 March 2007).

The court ruled that the trial judge did not err in not submitting second-degree murder as a lesser offense of first-degree felony (armed robbery) murder when evidence of the armed robbery was not in conflict. The robbery involved the

defendant as a buyer of marijuana from the murder victim. The victim gave the defendant limited and temporary access to the marijuana by tossing it in the backseat of a vehicle, where the defendant was seated, shortly before entering the vehicle himself. The victim did so only because he was expecting payment from the defendant. The victim in no way granted the defendant permission to depart with the property. The defendant's shooting of the victim and then departing with the marijuana constituted armed robbery, and the evidence of that offense was not in conflict.

In First-Degree Murder Trial in Which State Sought Conviction Based Solely on Felony Murder Theory, Trial Judge Erred in Not Submitting Second-Degree Murder to Jury When There Was Conflicting Evidence Concerning Commission of Underlying Felony of Armed Robbery

State v. Gwynn, 182 N.C. App. 343, 641 S.E.2d 719 (20 March 2007).

The court ruled, based on the principles set out in *State v. Millsaps, 356 N.C. 556, 572 S.E.2d 767 (2002)* (when to submit lesser-included offenses of first-degree felony murder), that in a first-degree murder trial in which the state sought a conviction based solely on the felony murder theory, the trial judge erred in not submitting second-degree murder to the jury when there was conflicting evidence concerning the commission of the underlying felony of armed robbery.

Felony Murder Does Not Distinguish Between Victims Who Are Innocent and Those Who Are Co-Felons.

State v. Torres 171 N.C. App. 419 (2005).

An instruction on felony murder was proper where defendant shot and killed a person who approached him from out of the headlights during a roadside robbery, and that person turned out to be an accomplice.

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

State v. Abraham, 338 N.C. 315 (1994)

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.

Homicide Felony murder-Motion to dismiss--Sufficiency of evidence--Acting in concert-- Trafficking in cocaine while also possessing deadly weapon

State v. Herring 176 NCA 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.

6. Constitutional Law_double jeopardy_felony murder and underlying felony

State v Oglesby, 174 NCA 658 (2005)

The trial court violated Double Jeopardy by sentencing defendant for both first-degree kidnapping and attempted armed robbery where the jury had been

instructed that both could be the underlying felony for felony murder. While there is an argument that judgment could be entered on neither underlying felony, prior Court of Appeal decisions require arrest of judgment on one of those felonies.

**Criminal Law § 980 (NCI4th) -- felony murder -- arrest of judgment on underlying felony -
- murder conviction reversed -- sentencing on arrested judgment**

State v Pakulski, 326 NC 434 (1990)

The trial court did not err by entering judgment and imposing sentence on convictions for felonious breaking or entering and felonious larceny where defendant was originally convicted of first degree murder on the felony murder theory; judgment on the underlying felonies was arrested; the felony murder conviction was overturned on appeal; and the State subsequently prayed for judgment on the felonious breaking or entering and felonious larceny convictions. When judgment is arrested on predicate felonies in a felony murder case to avoid a double jeopardy problem, the guilty verdicts on the underlying felonies remain on the docket and judgment can be entered if the conviction for murder is later reversed on appeal [***2] and the convictions on the predicate felonies are not disturbed on appeal.

2. Homicide § 21.6; Robbery § 4.3 -- felony murder -- armed robbery -- taking property after victim killed

State v Pakulski, 319 NC 562 (1987)

There was sufficient evidence of armed robbery to support submission of a felony murder charge to the jury where the evidence tended to show that defendants ransacked a doctor's office; when deceased entered as part of his rounds as a security guard, defendants attacked him, took his gun, and pinned him to the floor; and one defendant then shot deceased and took money from his person. A homicide victim is still a "person" within the meaning of a robbery statute when the interval between the fatal blow and the taking of property is short.

3. Homicide § 21.6 -- felony murder -- breaking or entering -- failure to prove possession of

deadly weapon

State v Pakulski, 319 NC 562 (1987)

Where the State failed to prove possession of a deadly weapon at the time of a felonious breaking or entering, that felony could not be used as a predicate to a felony murder charge.

4. Criminal [*4] Law § 124.2 -- felony murder -- felonies in disjunctive -- one felony unsupported by evidence -- new trial**

State v Pakulski, 319 NC 562 (1987)

Defendant is entitled to a new trial on a felony murder charge where armed robbery and felonious breaking or entering were submitted in the disjunctive as possible felonies supporting a felony murder conviction, the evidence was insufficient for submission of felonious breaking or entering as the underlying felony, and the theory upon which the jury relied cannot be discerned from the record.

Homicide § 727 (NCI4th) -- felony murder -- two underlying felonies -arrest of judgment on one felony

State v Barlowe, 337 NC 331 (1994)

Where the jury found defendant guilty of felony murder based on the underlying felonies of first-degree burglary and discharging a firearm into occupied property, and there was error in submission of first-degree burglary requiring a new trial on that charge, the judgment imposed on the discharging a firearm into occupied property conviction must be arrested. To the extent that dicta in *State v. Pakulski*, 326 N.C. 434, 437, 390 S.E.2d 129, suggests that convictions for more than one underlying felony merge with the murder conviction, thereby mandating that judgment on the multiple underlying felonies be arrested, that dicta is expressly disavowed. Am Jur 2d, Homicide §§ 549 et seq.

2. Homicide § 4.2 -- felony murder -- larceny interrupted

State v Fields, 315 NC 191 (1985)

A homicide victim's death occurred during the perpetration of a larceny, not after its completion, where defendant and his companions had entered a storage shed and removed a chain saw and maul and were checking to see if the house was occupied when the victim approached to investigate. The killing resulted from and was the culmination of defendant's course of conduct.

3. Homicide § 4.2 -- weapon carried but not used in underlying burglary and larceny -- evidence sufficient

State v Fields, 315 NC 191 (1985)

A killing was effected during the perpetration of a felony committed with the use of a deadly weapon within the definition of N.C.G.S. 14-17 where defendant carried a gun during the commission of a larceny but did not use it to commit the larceny. Possession is enough; moreover, the victim's arrival was an interruption of the larceny, not an event marking its completion, and killing the victim was clearly part of defendant's attempt to escape [***3] apprehension for the breaking and entering and theft from the tool shed.

5. Homicide--felony murder--underlying felony merges with felony murder conviction

State v Staten, 172 NCA 673 (2005)

The trial court erred in a first-degree felony murder case by failing to arrest judgment on the underlying armed robbery conviction, because: (1) the underlying offense merged with the felony murder conviction; and (2) the Court of Appeals' decision to reverse and remand the conviction with instructions to the trial court to impose a verdict as to common law robbery means the judgment is arrested on the common law robbery conviction.

2. Assault; Homicide--assault with deadly weapon inflicting serious injury--assault with deadly weapon--first-degree murder--motion to dismiss--sufficiency of evidence

State v Yarnell, 172 NCA 135 (2005)

The trial court did not err by denying defendant's motion to dismiss the charges of double assault with a deadly weapon inflicting serious injury, assault with a deadly weapon, and first-degree murder, because: (1) the State demonstrated how defendant's hands and feet were used as deadly weapons in the attack of one of the victims who was undressed and facing downward in an unlit bedroom when he was hit from behind, dragged to the ground, and then kicked while facing downward; (2) the State provided substantial elements for the assault with a deadly weapon inflicting serious injury of another victim who was also undressed and lying in bed in an unlit bedroom where she was struck, was bleeding, and blacked out; (3) the State showed that defendant used his hands and a rubber mallet to hit one victim and that during this attack another victim was hit in the head while she was trying to stop the attack which caused her to get a deep laceration over her left eye that required stitches, antibiotics, and a tetanus shot; and (4) with regard to the first-degree murder, the State showed substantial evidence that defendant attacked the victim after the victim had been knocked to the ground by another, defendant retrieved a rubber mallet from his vehicle and beat the victim with it, defendant stole the shoes from the victim's feet and fled the scene, and defendant told others during his flight that he had killed the victim.

1. Homicide--felony murder--killing of accomplice

State v. Torres, 171 NCA 419 (2005)

An instruction on felony murder was proper where defendant shot and killed a person who approached him from out of the headlights during a roadside robbery, and that person turned out to be an accomplice. Felony murder does not distinguish between victims who are innocent and those who are co-felons.

Conspiracy -- Felony Murder—specific intent

State v. Curry, 171 NC App 568 (2005)

First-degree murder by reason of felony murder is committed when a victim is killed during the perpetration or attempted perpetration of certain enumerated felonies or a felony is committed or attempted with the use of a deadly weapon. In felony murder, the killing may, but need not, be intentional. The key component, however, is the jurors must be instructed that to find a conspiracy to commit murder, they must first find an agreement to commit first-degree murder.

28. Homicide--felony murder--diminished capacity--instructions

State v. Roache 358 NC 243 (2004)

The trial court did not err in a multiple murder prosecution by failing to give an instruction on diminished capacity when instructing the jury on felony murder for the murder of one of the victims and by failing to refer to diminished capacity based on mental illness for the mandate given with reference to the felony murder of that victim, because by addressing specific intent and diminished capacity within the instruction on another victim's death, the trial court informed the jury that diminished capacity applied to armed robbery, which was the underlying felony in this victim's murder.

5. Homicide--felony murder--attempted rape--motion to dismiss--sufficiency of evidence

State v. Garcia 358 NC 382 (2004)

The trial court did not err by denying defendant's motion to dismiss the charge of felony murder based on attempted rape, because: (1) defendant removed his victim from a public area to a secluded location, defendant removed the victim's

shorts and underwear, defendant made statements to police concerning rape, and defendant did not run away when the victim resisted; and (2) the evidence presented by the State was sufficient evidence from which a jury could infer defendant's intent to engage in vaginal intercourse with the victim against her will.

3. Homicide--felony murder--motion to dismiss--sufficiency of evidence

State v. Coleman 161 NCA 224 (2003)

The trial court did not err by denying defendant's motion to dismiss the charge of felony murder based on armed robbery, because: (1) felony murder based on armed robbery does not depend on whether the intent to commit the taking of property was formed before or after the killing; and (2) based on the evidence, a reasonable juror could infer that the killing and the robbery were part of a single transaction.

1. Homicide--felony murder--motorist's death during flight from robbery--driving at the speed limit--not a break in circumstances

State v. Doyle 161 NCA 247 (2003)

Defendant's driving at the speed limit for a time between an armed robbery and the beginning of a high speed chase did not separate the subsequent death of a motorist from the robbery and flight. Escape need not be accomplished at high speeds; defendant presented no evidence that he was diverted from his chosen route and his motion to dismiss a first-degree felony murder charge was correctly denied.

2. Homicide--felony murder--motorist's death during high speed chase--insulating negligence--use of stop sticks foreseeable

State v. Doyle 161 NCA 247 (2003)

Defendant's requested special instructions on insulating negligence were correctly denied in a felony murder prosecution for the death of a motorist which occurred as defendant avoided stop sticks (devices used by police to puncture automobile tires) while fleeing from an armed robbery. The use of stop sticks was reasonably foreseeable.

4. Homicide - first-degree murder - felony murder -robbery with a dangerous weapon - sufficiency of evidence

State v. Earwood, 155 N.C. App. 698 (2003)

The trial court did not err by submitting to the jury the issue of first-degree murder under the felony murder theory even though defendant contends there was insufficient evidence of the underlying felony of robbery with a dangerous weapon, because: (1) the State introduced sufficient evidence to give a reasonable inference that defendant killed his victim mother to take her vehicle since defendant was not going to get a vehicle of his own; and (2) it is irrelevant that defendant stole the car after killing the victim. Circumstantial Evidence of Armed Robbery

1. Homicide--felony murder--sale of cocaine--motion to dismiss--sufficiency of evidence ** See Farb p. 4

State v. Squires 357 NC 529 (2003)

The trial court did not err in a double first-degree murder case by denying defendant's motions to dismiss related to the sale of cocaine as an underlying felony to support the felony murder of one of the victims, because: (1) the evidence was sufficient for a reasonable juror to find attempted sale of cocaine which is a lesser-included offense of sale of cocaine; (2) actions to which defendant has admitted, including possession of the drugs and scales while attempting to effectuate the sale, are sufficient to establish both intent and an act in preparation of an actual transfer of cocaine; (3) defendant's contention that the

language “sale of cocaine” on the verdict sheet required the jury to find that a completed sale occurred is without merit when the trial court instructed the jury that either a completed sale or an attempted sale of cocaine sufficed to support a conviction for felony murder; and (4) although defendant contends some jurors may have found a completed sale while others found an attempted sale, any member of the jury who found the elements constituting a sale of cocaine must necessarily have found the elements of attempted sale of cocaine.

10. Homicide--first-degree felony murder--motion to dismiss--sufficiency of evidence--armed robbery

State v. Barden 356 NC 316 (2002)

The trial court did not err by denying defendant’s motion to dismiss the charge of first-degree felony murder even though defendant contends the evidence was insufficient to support the underlying felony of armed robbery, because the evidence reveals that: (1) defendant wanted to borrow more money from the victim, but the victim refused the loan request; (2) the fatal blows to the victim’s skull, the taking of the wallet, and the discarding of evidence occurred in an unbroken transaction after the victim turned his back to defendant; and (3) the particular point in this sequence where the robbery occurred is immaterial when the death and the taking are so connected as to form a continuous chain of events.

1. Homicide–felony murder–shooting by accomplice–common purpose and natural consequences

State v. Dudley 151 NCA 711 (2002)

The trial court did not err in a prosecution for felony murder during a robbery and assault by denying defendant’s motion to dismiss where defendant and the other intruders were in pursuit of a common purpose (burglary and attempted robbery), the victim was shot by defendant’s accomplice, and there was also substantial evidence that the murder was a natural and probable consequence of the burglary

and attempted robbery.

4. Homicide–felony murder–two underlying convictions–jury not required to decide predicate

State v. Dudley 151 NCA 711 (2002)

The trial court did not err in a prosecution for burglary, attempted robbery, and felony murder by not requiring the jury to unanimously decide which felony was the predicate for the felony murder. Defendant was unanimously convicted of both potential underlying felonies, either of which could have been the basis for the felony murder conviction.

2. Homicide–felony murder–underlying assault—death resulting from separate strangulation–no merger

State v. Carroll 356 NC 526 (2002)

The trial court did not err by submitting felony murder to the jury based on a felonious assault where defendant contended that the assault merged with the killing, but the victim died from a separate strangulation and not as a result of the assault.

1. Homicide--first-degree murder--felony child abuse--motion to dismiss-sufficiency of evidence--caretaker

State v. Carrilo 149 NCA 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.

1. Homicide--first-degree murder--felony murder rule--assault with deadly weapon inflicting serious injury--operation of motor vehicle to elude arrest

State v. Woodard, 146 N.C. App. 75 (2001)

The trial court erred by allowing the underlying felonies of assault with a deadly weapon inflicting serious injury and operation of a motor vehicle to elude arrest to support the State's application of the felony murder rule and defendant's subsequent conviction of first-degree murder, because: (1) our Supreme Court has already held that it is improper to base a first-degree murder charge on the underlying felony of assault with a deadly weapon inflicting serious injury; and (2) felonious operation of a motor vehicle to elude arrest under N.C.G.S. § 20-141.5 does not provide an intent requirement for the aggravating factors necessary to raise the violation from a misdemeanor to a felony, and culpable negligence cannot serve as the basis for intent in a first-degree murder conviction.

Homicide--first-degree murder--felony murder rule--felonious child abuse

State v. Krider 145 NCA 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--felony murder--child abuse--motion to dismiss--sufficiency of evidence

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

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.Homicide--deadly weapon—hands

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

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--felony murder--DWI--implied intent

State v. Jones, 353 N.C. 159 (2000)

First-degree murder convictions which arose from driving while impaired were

reversed where the defendant was found guilty under the felony murder rule, based upon injuries to others in the victims' car and resulting assault convictions. The North Carolina murder statute, N.C.G.S. § 14-17, designates five specific felonies as the basis for felony murder, each requiring actual intent to commit the crime; while there is a catchall category of felonies committed with a deadly weapon (such as an automobile), all of the crimes qualified by case law require actual intent to commit the underlying crime. There is no first-degree murder case premised on implied intent as evidenced by culpable or criminal negligence and no language in N.C.G.S. § 14-17 suggesting that the legislature intended or even contemplated that first-degree murder might be premised on implied intent; however, the General Assembly has passed N.C.G.S. § 20-141.4, felony and misdemeanor death by vehicle, in contemplating situations similar to the case at hand. Moreover, the State's theory as to the applicability of the felony murder rule in reckless driving cases has the potential for profoundly unjust results, and it is presumed that the legislature did not intend an unjust result. If culpable negligence is to be a building block in a capital case, it must be by clear mandate of the legislature and not through judicial fiat or through innovative application by prosecutors. There is, however, ample evidence in the record to support a charge of second-degree murder.

1. Homicide--felony murder--voluntary intoxication--defense to robbery

State v. Golden, 143 N.C. App. 426 (2001)

The trial court committed prejudicial error in a first-degree murder case based on the felony murder rule by failing to instruct the jury on defendant's voluntary intoxication as a possible defense to the underlying felony of robbery, because: (1) substantial evidence was presented that defendant was intoxicated from consuming a number of beers, a half of a fifth of gin, and two rocks of crack cocaine in roughly four hours without eating anything; (2) a doctor testified that this amount of alcohol, combined with defendant's past alcohol abuse, drug use, and low I.Q. would impair defendant's ability to form the specific intent to rob; and (3) the jury found defendant not guilty of premeditated and deliberated murder, indicating defendant was incapable of forming specific intent, while

determining that defendant was capable of the specific intent to rob.

9. Homicide 199 (NCI4th) - felony murder - heart attack by victim - proximate cause of death

State v. Yelverton, 334 N.C. 532 (1993)

The State's evidence was sufficient to show that defendant's actions were the proximate cause of the victim's death so as to support his conviction of felony murder where it tended to show that defendant broke into and entered the victim's home, attacked the victim and his wife with a dust mop, and took a gun away from the wife; the seventy-one-year-old victim collapsed and died

1. Homicide 280 (NCI4th) - felony murder - discharging firearm into occupied property - evidence sufficient

State v. Cook, 334 N.C. 564 (1993)

4. Homicide 281, 279 (NCI4th) - felony murder - evidence of burglary and rape sufficient - evidence of felony murder sufficient

State v. Worsley, 336 N.C. 268 (1994)

1. Homicide 550 (NCI4th) first-degree murder - conflict about underlying felony or lying in wait -submission of lesser offenses

State v. Camacho, 337 N.C. 224 (1994)

For all murder cases prosecuted under N.C.G.S. 14-17 (1993), when there is a conflict in the evidence regarding whether defendant committed the underlying

felony or was lying in wait, all lesser degrees of homicide charged in the indictment pursuant to N.C.G.S. 15-144 and supported by the evidence must be submitted to the jury.

8. Homicide 271 (NCI4th) felony murder - money taken as afterthought - evidence sufficient

State v. Daniels, 337 N.C. 243 (1994)

1. Homicide 280 (NCI4th) first-degree felony murder - firing into occupied vehicle - sufficiency of evidence

State v. Carson, 337 N.C. 407 (1994)

1. Homicide 262 (NCI4th) felony murder -connection between murder and underlying felony

State v. Terry, 337 N.C. 615 (1994)

The trial court did not err in submitting first-degree felony murder to the jury where defendant argued that there was an insufficient connection between the murder and the underlying felony of felonious assault, but an interrelationship clearly existed between this felonious assault and the homicide in that the assault of one victim and the killing of another were part of an unbroken chain of events all of which occurred within two seconds. The law does not require that the homicide be committed to escape or to complete the underlying felony in order to apply the felony-murder principle, there need not be a "causal relationship" between the underlying felony and the homicide, only an "interrelationship," and, as a result of the 1977 Amendment to N.C.G.S. 14-17, the requirement that the underlying felony must create "a substantial, foreseeable risk to human life" is no longer applicable.

14. Homicide 86 (NCI4th) - felony murder - forfeiture of self-defense claim

State v. Bell, 338 N.C. 363 (1994)

A defendant charged with felony murder, as the aggressor in the underlying felony, forfeits his right to claim self-defense as a defense to the felony murder absent (1) a reasonable basis upon which the jury may have disbelieved the prosecution's evidence of the underlying felony, (2) a factual showing that defendant clearly articulated his intent to withdraw from the situation, or (3) a factual showing that at the time of the violence the dangerous situation no longer existed.

1. Homicide 588 (NCI4th) felony murder - imperfect self-defense - instruction not given no error

State v. Richardson, 341 N.C. 658 (1995)

There was no error in a first-degree murder prosecution where the trial court refused to instruct the jury on imperfect self-defense on the felony murder charge. Self-defense, perfect or imperfect, is not a defense to first-degree murder under the felony murder theory, and only perfect self-defense is applicable to the underlying felonies, assault with a deadly weapon with intent to kill inflicting serious injury and discharging a weapon into occupied property. The purpose of the felony murder rule is to deter even accidental killings from occurring during the commission of a dangerous felony; to allow self-defense, perfect or imperfect, to apply to felony murder would defeat that purpose, and if a person is killed during the perpetration or attempted perpetration of a felony, then the defendant is guilty of first-degree felony murder, not second-degree murder or manslaughter.

3. Homicide 727 (NCI4th) first-degree murder premeditation and deliberation and felony murder no merger of felony

State v. Richardson, 341 N.C. 658 (1995)

Where defendant was convicted of first-degree murder based upon both premeditation and deliberation and felony murder, the underlying felony did not merge with the murder conviction, and the trial court did not err by failing to arrest judgment on the underlying felony.

9. Arson and Other Burnings 32 (NCI4th); Homicide 278 (NCI4th) interval between killing and burning occupancy of dwelling first-degree arson felony murder

State v. Jaynes, 342 N.C. 249 (1995)

The evidence was sufficient to show that the killing of the victim and the burning of his dwelling were so joined by time and circumstances as to be part of one continuous transaction and therefore supports a finding that the dwelling was "occupied" within the meaning of N.C.G.S. 14-58,

10. Homicide 277 (NCI4th) felony murder common law robbery as underlying felony sufficient evidence

State v. Mitchell, 342 N.C. 797 (1996)

4. Homicide § 267 (NCI4th) killing during robbery guilt of robbery guilt of felony murder

State v. Barrett, 343 N.C. 164 (1996)

The State's evidence was sufficient to support defendant's conviction of felony murder of Mitchell Turner where it tended to show that defendant was guilty of armed robbery and that the victim killed during perpetration of the robbery. Whether there is sufficient evidence to show that defendant either committed the killing himself, intended that the killing take place or even knew that the killing would take place is irrelevant for purposes of determining defendant's guilt under the felony murder rule.

1. Homicide § 44 (NCI4th) murder in perpetration of kidnapping continuous chain of events

State v. Roseborough, 344 N.C. 121 (1996)

A killing is committed in the perpetration of a kidnapping when there is no break in the chain of events so that the kidnapping and the homicide are part of the same series of events, forming one continuous transaction. The temporal order of the killing and the felony is immaterial where there is a continuous transaction, and it is immaterial whether the intent to commit the felony was formed before or after the killing provided the felony and the killing are aspects of a single transaction.

2. Homicide § 283 (NCI4th) killing victim and kidnapping another continuous chain of events felony murder

State v. Roseborough, 344 N.C. 121 (1996)

The State's evidence was sufficient for the jury reasonably to infer that the killing of Rodriguez and the kidnapping of Celiz were part of one continuous chain of events so that the Celiz kidnapping was an appropriate predicate felony to support defendant's conviction of felony murder for the killing of Rodriguez where the evidence tended to show that defendant, Hunter, Peterson, and Noble sought out some Hispanics under a bridge and fired several warning shots; defendant and Hunter stopped two of the Hispanics who tried to come out from under the bridge; while defendant and Hunter were talking to these two Hispanics, Peterson fired the shots under the bridge which killed Rodriguez; Celiz came up out of the bushes and defendant asked him where he was going and whether he was trying to run away; defendant then asked Peterson for the gun and said he hadn't pistol whipped anybody in a long time; defendant then hit Celiz with the gun; defendant, Hunter, and Peterson continued the beating of Celiz, during which the first-degree kidnapping was committed; and when they heard sirens, defendant, Hunter, and Peterson ran away.

1. Criminal Law § 641 (NCI4th) felony murder State's announcement court's submission of premeditation and deliberation

State v. Hales, 344 N.C. 419 (1996)

The trial court did not err by submitting to the jury a charge of first-degree murder based on premeditation and deliberation after the district attorney announced at the pretrial and charge conferences that the State would not ask for a conviction based on premeditation and deliberation but would try defendant only for felony murder. The State did not make a binding election to proceed only on the

theory of felony murder, and the trial court was not deprived of its right and duty to determine what bases for the offense the evidence would support because the district attorney had a different opinion.

6 Homicide § 278 (NCI4th) felony murder underlying felony gasoline and fire as deadly weapon

State v. Hales, 344 N.C. 419 (1996)

There was sufficient evidence that the underlying felony of willfully setting fire to a dwelling of which defendant was an occupant was committed with a deadly weapon so as to support defendant's conviction of felony murder where evidence that defendant used gasoline and fire to burn a mobile home while it was occupied would support a finding that the gasoline and fire were used in combination as a deadly weapon.

7. Homicide § 727 (NCI4th) felony murder underlying conviction failure to arrest error

State v. Ocasio, 344 N.C. 568 (1996)

2. Homicide § 262 (NCI4th) assault on one victim shooting of second victim continuous transaction submission of felony murder

State v. Price, 344 N.C. 583 (1996)

A felonious assault on one victim occurred during the same series of events as the shooting of a second victim and had a causal relationship with the shooting so that the trial court did not err in submitting to the jury the charge of first-degree murder of the second victim under the felony murder theory where the evidence tended to show that defendant discovered his girlfriend sitting in a car with the assault victim; defendant pulled the assault victim from the car and beat him in the head with a pistol until he was unconscious; the girlfriend was screaming for the shooting victim to come to their aid; defendant testified that when he saw the shooting victim running toward him, he held the gun in front of him and told the shooting victim to "back off"; when the shooting victim continued to approach defendant, defendant tried to jab him with the gun in the forehead to knock him down and the gun went off and killed the victim; and the girlfriend testified that the series of events occurred "pretty much boom, boom, boom."

2. Homicide § 727 (NCI4th) first-degree murders premeditation and deliberation and felony murder sentence for underlying felony

State v. Burgess, 345 N.C. 372 (1997)

Where defendant was convicted of two first-degree murders based upon theories of premeditation and deliberation and felony murder, the underlying felony of arson did not merge with the murders, and the trial court did not err by sentencing defendant separately for each of the murders and for the underlying felony of arson.

3. Homicide § 727 (NCI4th) two first-degree murders premeditation and deliberation and felony murder each murder as underlying felony sentences for both murders

State v. Burgess, 345 N.C. 372 (1997)

Where defendant was convicted of two first-degree murders based upon theories of premeditation and deliberation and felony murder, there was no merger of either murder conviction by its use as an underlying felony for the other murder,

and the trial court did not err by sentencing defendant separately for each murder.

9. Homicide § 343 (NCI4th) - attempted felony murder-nonexistent crime

State v. Lea, 126 N.C. App. 440 (1997)

The offense of "attempted first-degree felony murder" does not exist under the law of North Carolina because felony murder is an unintentional killing, an attempt requires specific intent, and it would be a logical impossibility for defendant to intend what is by definition an unintentional result.

11. Homicide § 263 (NCI4th) - felony murder - based on felonious child abuse - evidence sufficient

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

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.

3. Homicide § 262 (NCI4th) - felony murder - felony after murder

State v. Tucker, 347 N.C. 235 (1997)

The trial court did not err by not dismissing a felony murder charge where defendant left a K-Mart wearing clothes for which he had not paid; shot and killed a security guard who followed him into a parking lot; ran approximately four hundred feet; and fired into a police vehicle which approached him, striking both officers inside. The evidence tended to show that defendant stole merchandise from the Super K-Mart Center, shot at two employees of K-Mart in an effort to

avoid apprehension, fatally wounding one, and at two law enforcement officers, and that the entire incident consumed less than two minutes.

12. Homicide § 282 (NCI4th) - felony murder - intercourse against victim's will - rape and killing as continuous transaction

State v. Trull, 349 N.C. 428 (1998)

There was sufficient evidence that defendant and the victim had intercourse against the victim's will and that the rape and killing occurred pursuant to a continuous transaction so as to support defendant's conviction of felony murder where it tended to show that defendant abducted the victim from her apartment, took her to the woods, and tied her to a tree; the intercourse occurred in the woods where the victim's body was found; defendant's sperm was found inside the victim's vagina; and defendant failed to present any evidence that the sex was consensual.

1. Criminal Law - felony murder - self defense - evidence insufficient

State v. Martin, 131 N.C. App. 38 (1998)

The trial court did not err in a prosecution for felony murder by denying defendant's request for an instruction on self-defense as to the underlying felonies, assault and discharging a firearm into occupied property. In felony murder cases, self-defense is available only to the extent that perfect self-defense applies to the relevant underlying felonies and the evidence here failed to support several elements of perfect self-defense.