

DEFENSES

Instruction On Self-Defense Not Required Where There Was No Evidence That Defendant Believed It Was Necessary To Kill Victim To Save Self From Death Or Great Bodily Harm

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

Holding, in a murder case, and over a dissenting opinion, that an instruction on self-defense was not required where there was no evidence that the defendant believed it was necessary to kill the victim in order to save himself from death or great bodily harm.

(1) Trial Judge Did Not Abuse Discretion in Precluding Defendant as Discovery Sanction From Asserting Defenses of Voluntary Intoxication and Diminished Capacity

State v. McDonald, ___ N.C. App. ___, 663 S.E.2d 462 (5 August 2008).

The defendant was convicted of attempted first-degree murder and a felonious assault. On the first day of trial, the state moved for an order precluding the defendant from asserting any of the defenses covered by G.S. 15A-905(c) because the defendant had not responded to the state's reciprocal motions for discovery and notice of defenses. The trial judge ruled that the defendant would be permitted to assert the defenses of accident and duress, but was barred from asserting any other defenses. The defendant had informed the judge that he also wanted to assert the defenses of voluntary intoxication and diminished capacity, but was barred from doing so by the judge's ruling. (1) The court ruled that the judge did not abuse his discretion in precluding the two defenses as a discovery sanction. (Author's note: The defendant waived a constitutional objection to the judge's ruling by failing to raise that objection at trial.) The court noted that the trial judge's decision to allow the defendant to use two defenses (accident and duress) demonstrates that the judge affirmatively exercised his discretion and precluded only those defenses that would have prejudiced the state (obtaining experts at a late date).

Trial Judge Did Not Err in Not Instructing Jury on Voluntary Intoxication

State v. Muhammad, 186 N.C. App. 355, 651 S.E.2d 569 (16 October 2007).

The defendant was convicted of first-degree murder. The court ruled that the trial judge did not err in denying the defendant's request for a jury instruction on diminished capacity by voluntary intoxication. There was testimony that the defendant was drinking tequila straight from a one-gallon bottle and also drank three or four beers in approximately a one-and-one-half hour period. The court noted that the defendant had the

ability to drive and communicate with other people. There was no evidence suggesting that the defendant was incapable of forming a deliberate and premeditated purpose to kill.

Defendant Was Not Entitled to Defense of Duress in Second-Degree Vehicular Murder Trial

State v. Brown, 182 N.C. App. 115, 646 S.E.2d 775 (6 March 2007).

The defendant was convicted of second-degree murder and other offenses (willful speed competition, reckless driving, and driving left of center) as a result of a collision of his vehicle (vehicle A) with another vehicle (vehicle B) as they sped together on a highway, and vehicle B crashed into the decedent's vehicle (vehicle C), which was traveling in the opposite direction from vehicles A and B. The court ruled that the defendant was not entitled to a jury instruction on the defense of duress. The defendant did not have a well-grounded apprehension of death or serious bodily harm. Also, he had a reasonable opportunity to avoid his conduct without undue exposure to death or serious bodily harm: he had ample opportunity to either maintain a safe speed or to pull over off the highway. (See the court's discussion of the facts in its opinion.)

2. Criminal Law-Diminished capacity defense-Information required to be provided

State v Gillespie 180 NCA 514 (2006) On appeal

The **trial erred in entering a sanction totally excluding evidence of defendant's mental health experts in a first-degree murder prosecution**, and this error was **prejudicial**. A defendant must provide notice of intent to offer a defense of insanity or diminished capacity, and must provide specific information about the nature and extent of the insanity defense, but is not required to provide specific information about diminished capacity.

4. Criminal Law-Discovery-Mental health defense--Cooperation of defense experts with State experts

State v Gillespie 180 NCA 514 (2006) On appeal

The trial court acted under a misapprehension of the law regarding the role of and the requirements of defense expert witnesses when it found that defense experts in a murder case intentionally and inexcusably refused to cooperate with Dorothea Dix staff and excluded his mental health defense. **The only responsibility imposed by N.C.G.S. § 15A-905(c)(2) is to prepare a report, which must be supplied to the State; nothing requires that defendant's experts supply other information or records directly to the State, much to less a state agency.**

4. Evidence--guilt of another defense--relevancy--failure to make offer of proof

State v Ryals 179 NCA 733 (2006)

The trial court did not err in a second-degree murder case by **prohibiting defendant from crossexamining a witness as to whether he would submit a DNA sample** for comparison with a knit cap found at the crime scene, because: (1) N.C.G.S. § 8C-1, Rule 401 provides that **evidence of the guilt of another must point directly to the guilt of another specific party and must tend both to implicate that other party and be inconsistent with the guilt of defendant**; (2) evidence which does no more than create an inference or conjecture as to another's guilt is inadmissible; (3) defendant made no offer of proof as to what the witness's answer to this question would have been; (4) even assuming arguendo that the witness would have answered this question in the negative, such an answer would not point directly to his guilt, nor would it be inconsistent with defendant's guilt when conflicting evidence was presented at trial as to whether the perpetrator of the assault was wearing a hat; and (5) defendant failed to raise at trial the constitutional issue of the right to present a complete defense, and it will not be addressed for the first time on appeal.

2. Homicide-Self-defense-Instruction not given in final mandate

State v Withers 179 NCA 249 (2006)

The trial court's **failure to specifically instruct the jury on self-defense in the final mandate** was **reversible error**. The jury could have assumed that not guilty by reason of self- defense was not a permissible verdict.

3. Homicide-Defense of home-Duty to retreat and use of force-Failure to instruct

State v Withers 179 NCA 249 (2006)

The trial **court committed plain error** in a first-degree murder case by failing to instruct the jury that if it found defendant was not the aggressor, defendant did not have a duty to retreat, but could stand his ground, repel force with force, and increase the amount of force used. The jury could have found, under the circumstances, that defendant was not the aggressor and was attacked in his home or on his premises; without the instruction, the jury may have believed that defendant acted with malice.

4. Homicide-Defense of home--Porch and doorway

State v Withers 179 NCA 249 (2006)

In a case remanded on other grounds, an instruction on defense of home did not improperly narrow the jury's focus to activities on defendant's porch. There was conflicting evidence about whether defendant was inside his doorway or on his porch at the time of the shooting and the court

instructed that the jury could find the porch to be part of the home. The court did not foreclose the possibility of finding that defendant acted to prevent the victim from entering his home.

5. Trespass-Right to remove trespasser-Deadly force not permitted

State v Withers 179 NCA 249 (2006)

It was not permissible for defendant to use deadly force to remove a trespasser. The trial court did not err (in a first-degree murder case remanded on other grounds) by not giving an instruction that defendant had the right to evict trespassers from his property, regardless of whether the victim was in defendant's home.

4. Criminal Law--Instruction--Aggressor--Collateral estoppel-Double jeopardy

State v. Herndon 177 NCA 353 (2006).

The trial court did not commit plain error in a voluntary manslaughter case by giving the jury an aggressor instruction where an earlier jury in defendant's first trial allegedly previously determined he was not the aggressor, because: (1) the **doctrine of collateral estoppel did not apply, nor did jeopardy attach, when no unanimous verdict was reached by the earlier jury about whether defendant was the aggressor;** and (2) the note from the prior jury stating it had determined that defendant was not the aggressor merely demonstrated a moment in time during the jury deliberations. **See Farb's notes p. 22**

The Court ruled that requiring a defendant charged with firearms offenses to prove her defense of duress by a preponderance of the evidence instead of requiring the government to prove beyond a reasonable doubt that she did not act under duress did not violate her due process rights

Dixon v. United States, (22 June 2006). US Sup Ct

State Supreme Court's Rule on Admissibility of Proposed Defense Evidence of Third Party Guilt Was Arbitrary and Violated Defendant's Right to Present Defense

Holmes v. South Carolina, 126 S.Ct. 1727(2006)

The defendant was convicted of murder and other offenses and sentenced to death. The state relied heavily on forensic evidence, including DNA, palm print, and fiber evidence. The defendant offered evidence that sought to undermine the state's forensic evidence. The trial judge prohibited the defendant from introducing evidence that a third party (White) had murdered the victim: several witnesses placed White in the victim's

neighborhood on the morning of the murder and White acknowledged that the defendant was innocent or had actually admitted to committing the offenses. **The state supreme court, in affirming the trial judge's ruling, applied a rule that when there is strong evidence of a defendant's guilt, such as strong forensic evidence, the defendant's proffered evidence of a third party's guilt may be excluded.** The United States Supreme Court categorized this rule as focusing solely on the strength of the state's evidence in determining whether to admit the defense evidence. **The Court ruled that the rule was arbitrary and violated the defendant's right to present a defense. ***Not applicable to NC b/c NC looks at both side's evidence. Our law is different. May be cited by Def. Atty. though!******

Homicide--second-degree murder--final mandate--exclusion of verdict of not guilty by reason of selfdefense

State v. Ledford 171 NCA144 (2005)

The trial **court erred** in a second-degree murder case by omitting the verdict of not guilty by reason of self defense in its final mandate to the jury and defendant is entitled to a new trial.

2. Criminal Law--defenses--voluntary intoxication--specific intent crimes only Voluntary intoxication was not a defense to failing to register as a sex offender, which is not specific intent crime.

State v. Harris 171 NCA 127 (2005)

9. Evidence--exclusion of testimony--prior violent sexual act by victim Self-defense

State v. Campbell 359 NC 644 (2005)

The trial court did not err in a capital first-degree murder case by **excluding testimony regarding an alleged prior violent sexual act by the victim even though defendant wanted to use it to show that the victim was the first aggressor in the incident leading up to his death, because:** (1) defendant had not offered any evidence of self-defense at the time he attempted to introduce this particular testimony of two witnesses, and thus, the fact that an unidentified man accused the victim of assault several years before the crime for which defendant was charged took place did not make any fact in the case more probable or less probable; and (2) although defendant now contends the testimony was independently admissible to impeach the testimony of another witness who stated that she had never known the victim to be violent, defendant failed to make this argument at trial and cannot now advance a different theory on appeal.

Criminal Law--insanity defense--prosecutor's improper arguments

State v. Millsaps 169 NCA 340 (2005)

The trial **court abused its discretion** in a prosecution for first-degree murder and other offenses **by overruling defendant's objections to the prosecutor's improper and prejudicial remarks during closing arguments, and defendant is entitled to a new trial**, because: (1) the prosecutor **argued outside the evidence presented that it was 99 percent certain a judge someday can and will say release defendant**, and the remark impermissibly indicated that defendant would likely be released after a very short period of time if he was found not guilty by reason of insanity; (2) the comparison of defendant's acts to those of the September 11 terrorists, which had occurred only a little over a year earlier, appealed to the jury's sense of passion and prejudice by comparing defendant's acts to infamous events outside the record; and (3) it cannot be said beyond a reasonable doubt that the improper and prejudicial arguments by the prosecutor, which were neither checked nor cured by the trial court, did not contribute to defendant's conviction.

1. Criminal Law—defenses—necessity—driving while impaired

State v. Hudgins 167 NCA 705 (2005)

An instruction on the **defense of necessity should have been given in a DWI trial**. The **defense remains available even though DWI is a strict liability offense**, and a trial judge is not relieved of the duty to give a correct instruction, there being evidence to support it, merely because the request was not altogether correct. There was substantial evidence of the defense in that defendant said he jumped behind the wheel of the moving truck and steered it to prevent collisions with another vehicle and a house and injuries to others. Credibility is for the jury.

2. Evidence—prior violent behavior—cross-examination--relevance—defendant's evidence of nonviolent character

State v. Ammons 167 NCA 721 (2005)

The trial court did not err in a voluntary manslaughter prosecution by allowing the State to cross-examine the defendant about **his prior violent behavior. Although a claim of self-defense does not automatically put defendant's character for violence or aggression at issue, defendant testified to his character for non-violence and these inquires were relevant to his credibility.**

Firearms and Other Weapons--possession of firearm by felon--special instruction--justification defense--failure to request in writing

State v. Craig 167 NCA 793 (2005)

The trial **court did not err by denying defendant's request to give a special instruction on the defense of justification of possession of a firearm by a felon**, because: (1) defendant failed to request the special instruction in writing as required by N.C.G.S. § 1-181 and Rule 21 of the General Rules of Practice for the Superior and District Courts; and (2) assuming arguendo that defendant had properly presented the special instruction, the trial court still did not err by declining to instruct the jury on the justification defense since the **uncontroverted evidence in this case shows that, after leaving the altercation, defendant kept the gun and took it with him to a friend's house where he was not under an imminent threat while possessing the gun.**

5. Homicide--first-degree-murder--requested instruction--accidental death

State v. Lanier 165 NCA 337 (2004)

The trial **court did not err** in a first-degree murder case **by failing to give defendant's requested jury instruction on the theory of accidental death**, because: (1) the trial court's instruction on accident was a correct statement of the law and contained the substance of the instruction defendant requested; and (2) defendant failed to show that had the jury been instructed as she suggested, there is a reasonable probability that the outcome of her trial would have been different.

3. Criminal Law--closing arguments--defense of accident

State v. Gattis 166 NCA 1 (2004)

The trial court did not erroneously deprive defendant of his right to present the defense of accident in a first-degree murder, first-degree burglary, and assault with a deadly weapon case by prohibiting defendant from using the word "accidentally" in his closing argument, because: (1) evidence does not raise the defense of accident where defendant was not engaged in lawful conduct when the killing occurred; and (2) to the extent defendant contends the trial court's ruling precluded him from negating premeditation and deliberation, the closing argument reveals otherwise.

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.

29. Criminal Law--instructions--diminished capacity--acting in concert

State v. Roache 358 NC 243 (2004)

The trial court did not err in a multiple murder prosecution by failing to instruct on diminished capacity with regard to acting in concert, because **our Supreme Court has never applied the doctrine of diminished capacity to the general intent necessary for acting in concert**, and defendant has cited no authority to support extension of its application.

2. Evidence--hearsay--information from website

State v. Blackwell 163 NCA 12 (2004)

Testimony from a firearms expert that a sawed-off shotgun was manufactured after 1905, based on information from a website, was not inadmissible hearsay. Moreover, its admission was not plain error because the **antique status of a sawed-off shotgun is an affirmative defense**, and the initial burden of presenting evidence on the antiquity of the shotgun was on defendant. The only evidence presented by defendant was merely that the shotgun was old. **14-288.8c See Farb p22 Before 1898**

1. Homicide--self-defense--no duty to retreat in home--instruction not given

State v. Everett 163 NCA 95 (2004)

A second-degree murder defendant was entitled to an instruction that she had **no duty to retreat in her home**, and a new trial was granted, where there was sufficient evidence that she was attacked by her husband in her home and that she was not at fault, and **the State argued in closing that she had a duty to leave**.

1. Evidence--homicide victim's character--not in issue--defense of accident

State v. Crawford 163 NCA 122 (2004)

Testimony that a murder victim had shot her former husband was properly excluded. **Defendant had raised the defense of accident, and the character of the victim was not in issue.**

1. Criminal Law--defense of habitation--instruction--assault with firearm on law enforcement officer

State v. Pelham 164 NCA 70 (2004)

Although the trial **court erred** in an assault with a deadly weapon with intent to kill inflicting serious injury, assault with a firearm on a law enforcement officer, and drug case by failing to give defendant's

requested instruction on the defense of habitation in a situation where officers possessed a search warrant, defendant was awakened by the officers' distraction device, and defendant as well as other witnesses maintained that they never heard the officers' warning that they were from the sheriff's department and had a search warrant, this assignment of error is dismissed as harmless error because: (1) by finding defendant guilty of assault with a firearm on a law enforcement officer, the jury necessarily concluded that defendant was aware or had reasonable grounds to be aware of the officers' identity and further concluded that they were acting within the scope of their authority; and (2) the defense of habitation has no applicability to the facts as found by the jury since the defense does not apply unless the entry is unlawful.

4. Criminal Law - self-defense – instructions

State v. Carter, 357 N.C. 345 (2003)

The trial court did not err in a first-degree murder prosecution by instructing the jury that defendant's conduct could be excused if it appeared necessary to the defendant and he believed it to be necessary that he kill the victim to save himself from death or great bodily harm. Although defendant argued that this instruction deprived defendant of self-defense even if the jury found that the victim suffered injuries greater than defendant had intended, an instruction identical in all relevant respects was approved in *State v. Richardson, 341 N.C. 585*.

5. Homicide–self-defense–claim of accident

State v. Meadows 158 NCA 390 (2003)

Defendant was not entitled to a self-defense instruction for a shooting that he contended was accidental.

6. Homicide–self-defense–belief in necessity of shooting

State v. Meadows 158 NCA 390 (2003)

The trial court did not err by not instructing on self-defense in an attempted murder trial where defendant's belief that the shooting was necessary to save himself was not objectively reasonable.

3. Firearms and Other Weapons--assault with firearm on law enforcement officer— jury instructions--defendant's right to defend himself--pointing of firearm

State v. Childers 154 NCA 375 (2002)

The trial court did not err by failing to give jury instructions that defendant had a right to defend himself with regard to an unlawful arrest and that the firearm he possessed at the time of his arrest was required to be pointed at

or toward the alleged victims to find defendant guilty of assault with a firearm on a law enforcement officer, because: (1) the evidence did not support defendant's contention that he was subjected to an unlawful arrest; and (2) the State did not need to prove that he pointed a firearm at a law enforcement officer but instead needed to prove that defendant put on a show of force or violence sufficient to put a person of reasonable firmness in fear of immediate physical threat.

Homicide--voluntary manslaughter--failure to include possible verdict of not guilty by reason of self defense

State v. Williams 154 NCA 496 (2002)

The trial court erred in a voluntary manslaughter case by failing to include not guilty by reason of self-defense as a possible verdict in its final mandate to the jury and defendant is entitled to a new trial.

1. Criminal Law--defenses--automatism--unaware of significance of acts

State v. Andrews 154 NCA 553 (2002)

The trial court did not err in a prosecution for attempted first-degree murder and assault by refusing to instruct the jury on unconsciousness or automatism where defendant's expert testified that defendant's medications could cause a person to act "unknowingly." The doctor was referring to awareness of significance rather than awareness of actions and never testified that defendant was actually unconscious or incapable of controlling his actions at the time of these events.

3. Criminal Law--defenses--voluntary intoxication--evidence sufficient

State v. Keitt 153 NCA 671 (2002)

The trial **court erred** by not giving an instruction on voluntary intoxication where defendant was so intoxicated on the night of the break-in that he was barely able to stand; the victim smelled alcohol on him; defendant had trouble leaving her home, fumbling at the door; and the arresting officer smelled alcohol on him the next morning. The central issue was intent, and there was a reasonable possibility of a different result if the instruction had been given.

5. Evidence - limitation on ability to show self - defense - gratuitous self - defense instruction **Accident or Self-defense--- inconsistent

State v. Nicholson, 355 N.C. 1 (2002)

The trial court did not abuse its discretion in a double capital first-degree murder prosecution by excluding the testimony of two psychiatrists tending to show defendant's perception of the need to use deadly force to defend himself because: (1) there was no evidence to support a finding

that defendant formed a belief that it was necessary to kill either his wife or the chief of police to protect defendant from death or serious harm; (2) **defendant is not entitled to argue self-defense while still insisting that he did not fire a gun at anyone and that he did not intend to shoot anyone**; (3) expert testimony was irrelevant since defendant's own testimony showed that he did not believe it was necessary to use deadly force against any individuals to protect himself; and (4) the self-defense instruction defendant received in this case was a benefit to which he was not entitled, and defendant was not allowed to present additional evidence in support of a defense not warranted by the evidence.

2.Evidence--possible perpetrators other than defendant--relevancy

State v. Williams 355 NC 501 (2002)

The trial court did not err in a first-degree murder and first-degree rape case by ruling that defendant's evidence implicating three other men as possible perpetrators was inadmissible, because: (1) there was no evidence one of the alleged perpetrators had committed the crime except for his proximity to the crime scene; (2) even though defendant sought to call another of the alleged perpetrators as a witness and then impeach him with another witness's testimony, prior inconsistent statements may not be used as substantive evidence; and (3) the evidence defendant sought to elicit about the last alleged perpetrator did not tend to implicate the man, nor was the evidence inconsistent with defendant's guilt.

3. Juveniles - assault on government official - delinquency

IN RE POPE, 151 N.C. App. 117 (2002)

The trial court did **not err by not finding that a juvenile acted in self - defense** where a middle school principal **carried the juvenile to the office to keep him from leaving the building**, with the student grabbing a doorframe and scratching the principal in the process. The juvenile engaged in and continued a difficulty with the principal when he refused to heed warnings not to leave the building; the principal was required to undertake reasonable force to protect the juvenile's safety and to prevent him from leaving school premises.

5. Criminal Law--duress--opportunity to escape

State v. Smarr, 146 N.C. App. 44 (2001)

The trial court did not err in a prosecution for second-degree murder, attempted armed robbery, and other crimes by not giving an instruction on duress. **Duress is not applicable to murder**; furthermore, even under defendant's version of the facts, defendant had the opportunity to avoid committing the crimes without undue exposure to risk of death or serious

bodily harm. Defendant's fear that he would be hurt later if the other participants thought that he told the police about their plan is not the kind of immediate threat of harm that would negate his opportunity to escape.

2.Homicide--jury instruction--self-defense

State v. Jackson 145 NCA 86 (2001)

The trial court did not err in a second-degree murder case by refusing to instruct the jury on self defense based on defendant's alleged fear for his own safety and the safety of his wife, because: (1) defendant's belief was not reasonable when the actual physical confrontation between defendant and decedent had ended, and defendant and his wife had retreated to the safety of their car; and (2) there was no evidence decedent posed any real immediate threat to defendant or his wife inside their vehicle when decedent made no movement toward defendant's vehicle prior to being struck.

4.Assault--jury instruction--self-defense

State v. Skipper 146 NCA 532 (2001)

The trial court did not err in an assault with a deadly weapon inflicting serious injury case by failing to instruct the jury on self-defense, because: (1) there is no evidence in the record which would support an inference that defendant did not enter into the altercation with the victim voluntarily; and (2) defendant failed to present evidence showing that despite entering the altercation voluntarily, he abandoned the fight, withdrew from the fight, and gave notice to the victim that he had done so.

6.Homicide--requested instruction--imperfect self-defense

State v. Wilson 354 NC 493 (2001)

The trial court did not err in a first-degree murder prosecution by denying defendant's motion for his requested instruction on imperfect self-defense, because: (1) **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;** and (2) no evidence tended to negate that defendant committed robbery with a dangerous weapon by acting in concert with his coparticipant.

1.Criminal Law--requested instruction--voluntary intoxication--utterly incapable standard

State v Long 354 NC 534 (2001)

The trial court did not err in a capital first-degree murder prosecution by denying defendant's request to instruct the jury on voluntary intoxication as a defense to premeditated and deliberate murder, because defendant

failed to satisfy the high threshold utterly incapable standard based on the facts that: (1) defendant had a sufficient amount of time to become intoxicated after committing the murder; (2) no evidence suggests the degree of defendant's intoxication, if any, at the time of the murder; (3) evidence of defendant's actions designed to hide defendant's participation or to clean up after the murder demonstrates that defendant could plan and think rationally, and thus, was not so intoxicated at the time of the murder as to negate defendant's ability to form specific intent; and (4) the trial court submitted the lesser-included offense of second-degree murder giving the jurors the option to find that defendant failed to have the specific intent necessary.

7.Homicide--self-defense--duty to retreat--instruction not required

State v. Allen, 141 N.C. App. 610 (2000)

A murder **defendant was not entitled to an instruction that he had no duty to retreat** where his testimony revealed a series of escalating events leading to the victim's death but did not reveal that it was actually or reasonably necessary under the circumstances to kill the victim. Therefore, defendant was required to retreat if a way of escape was open to him, and his testimony indicates that he left the altercation to go to the bathroom, a diagram of the apartment indicated that defendant was required to pass the front door, and defendant's testimony did not indicate that the front door was obstructed in any way.

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.

4. Criminal Law - Automatism - instructions

State v. Jones, 137 N.C. App. 221 (2000)

There was no plain error in a first-degree murder prosecution where the trial court instructed the jury that **the burden of proof** for the affirmative defense of unconsciousness or automatism **lay with defendant**.

7. Homicide 566 (NCI4th) - murder - instruction on voluntary manslaughter as lesser included offense- imperfect self defense - denied

State v. Ligon, 332 N.C. 224 (1992)

The trial court did not err in a murder prosecution by not instructing the jury on the lesser included offense of voluntary manslaughter based on imperfect self defense where, even assuming defendant's version of the evidence is accurate, there was absolutely no evidence that defendant believed it necessary to kill the victim in order to save himself from death or great bodily harm and, even if he had such a belief, it certainly would not have been reasonable, given that the victim's car was speeding away when the shots were fired.

8. Homicide 562 (NCI4th) - murder - instruction on voluntary manslaughter as lesser included offense- provocation - denied

State v. Ligon, 332 N.C. 224 (1992)

The trial court did not err in a murder prosecution by not instructing the jury on the lesser included offense of voluntary manslaughter based on provocation where, assuming defendant's version of the evidence was accurate, there was absolutely no evidence that defendant shot the victim in the heat of passion upon adequate provocation. While defendant may have been "provoked" that the victim stole his cocaine, that is hardly what the law regards as adequate provocation.

1. Criminal Law 775 (NCI4th) - murder - voluntary intoxication - instruction refused - no error

State v. Oliver, 334 NC 513 (1993)

There was no error in a first-degree murder prosecution in the court's failure to give defendant's requested instruction on voluntary intoxication where defendant presented no evidence relating to his degree of intoxication and none of the State's witnesses specifically testified that defendant was intoxicated. This evidence is insufficient under *State v. Mash, 323 N.C. 339*, to require the trial court to instruct the jury on voluntary intoxication even when viewed in the light most favorable to defendant.

10. Criminal Law 775 (NCI4th) - voluntary intoxication - insufficient evidence to require instruction

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

The trial court did not err by refusing to instruct on voluntary intoxication where there was some evidence that defendant had drunk "a right smart amount" of beer and liquor at a party and had smoked crack cocaine with a companion on the evening of the crimes; the only evidence that defendant was in any way affected by his drinking and smoking of crack was defendant's statement to officers that he did not deny having committed the crimes but had no memory of having done so; and a victim and the man with whom defendant smoked crack both testified that defendant appeared to be rational and showed no other physical signs of intoxication.

2. Homicide 380 (NCI4th) - murder - defense of others - necessity - evidence not sufficient

State v. McKoy, 332 N.C. 639 (1992)

The trial court did not err in a murder prosecution by not charging on self-defense based on the defense of a third person where the evidence does not support a finding that there could have been a reasonable belief in the mind of a person of ordinary firmness that it was necessary to stab the victim in order to defend the third person.

7. Criminal Law 775 (NCI4th) - murder - voluntary intoxication - instruction refused - no error

State v. Brown, 335 N.C. 477 (1994)

9. Evidence and Witnesses 2299 (NCI4th) - first-degree murder-whether defendant would have killed without alcohol and cocaine - psychologist's opinion - not admissible

State v. Fisher, 336 N.C. 684 (1994)

1. Assault and Battery 100 (NCI4th) - self-defense - insufficiency of evidence

State v. Wills, 110 N.C. App. 206 (1993)

In a prosecution of defendant for assault with a deadly weapon with intent to kill inflicting serious injury, the trial court did not err in refusing to instruct the jury on self-defense where the evidence tended to show that the unarmed victim, who was six feet from defendant, walked toward defendant immediately prior to the shooting; defendant admitted that he had never seen the victim with a weapon of any kind and that he could have avoided the scene of the crime by continuing to walk along the highway; defendant shot the victim at least five or six times even after he had fallen to the ground after the first two shots; and evidence that the

victim had punched defendant two days earlier and had threatened to assault defendant earlier during the day of the shooting was not sufficient to show that at the time of the shooting defendant was in actual or apparent danger of death or great bodily harm.

3. Assault and Battery 100 (NCI4th) - self-defense - defendant at fault in bringing on affray – no instruction required

State v. Owen, 111 N.C. App. 300 (1993)

Defendant was not entitled to an instruction on self-defense when he entered the victims' house and bedroom without permission and thus was at fault in starting the conflict, and defendant did not attempt to withdraw from the fight with the victim or attempt to communicate his desire to withdraw.

2. Assault and Battery 99 (NCI4th) - self-defense - sufficiency of evidence to require jury instruction

State v. Moore, 111 N.C. App. 649 (1993)

The trial court erred in failing to instruct on self-defense where there was evidence tending to show that defendant and his wife were attempting to leave the victim's home when the victim charged at defendant with a hammer in his hand; during the ensuing altercation defendant was able to obtain control of the hammer and to use it to resist the victim's attack; and there was competent evidence in the record from which the jury could find that defendant was not the aggressor and that he used only the amount of force necessary, or that which appeared reasonably necessary, to repel the victim's attack.

1. Homicide 287 (NCI4th) - second-degree murder - self-defense - sufficiency of evidence

State v. Irby, 113 N.C. App. 427 (1994)

The State presented substantial evidence of each element of second-degree murder and substantial evidence from which the jury could infer that defendant did not act in self-defense or in defense of his family where the evidence tended to show that there was a forty-five minute delay between the firing of shots and a telephone call for emergency help; it could be inferred from this delay that defendant intended to assure the deaths of the victims rather than merely to stop any aggression by the victims toward defendant's father;

2. Evidence and Witnesses 367 (NCI4th) - second-degree murder - self-defense - evidence of prior shootings - erroneous admission

State v. Irby, 113 N.C. App. 427 (1994)

The trial court in a second-degree murder case erred in admitting evidence of two prior shooting incidents by defendant and his father, though the State ostensibly offered evidence of the prior shooting incidents to show defendant's intent, since there was no connection between those shootings and the crimes charged other than to show defendant's character and propensity for violence and that he must have acted in conformity with that character and not in self-defense.

Homicide 635 (NCI4th) - self-defense - no duty to retreat in own home - failure to instruct error

State v. Brown, 117 N.C. App. 239 (1994)

Evidence that defendant tried to leave her house on two occasions but was stopped by her husband and that she stabbed her husband with a butcher knife after he tried to choke her was legally sufficient to support a conclusion that defendant was attacked by her husband in her own home and that she was not at fault

14. Homicide 669 (NCI4th) - voluntary intoxication instruction - insufficient evidence

State v. Skipper, 337 N.C. 1 (1994)

The evidence in a capital trial was insufficient to require an instruction on voluntary intoxication where it showed only that defendant had been drinking for some time during the day of the murder and that he did not want to drive because he had been drinking, but there was no evidence that defendant looked drunk or that he was having difficulty speaking or walking, and no evidence as to how much defendant had actually drunk.

4. Homicide 658 (NCI4th) voluntary intoxication instruction not required by evidence

State v. Barlowe, 337 N.C. 371 (1994)

The trial court did not err by refusing to instruct the jury on voluntary intoxication in a felony murder prosecution based on the underlying felony of first-degree burglary with the intent to commit murder where the evidence tended to show that defendant consumed alcoholic beverages during the day and evening of the crimes and that defendant was somewhat intoxicated, but nothing in the record indicated that defendant's mind and reason were so completely overwhelmed by alcohol that he was rendered incapable of forming the requisite intent to kill, and defendant testified that he knew what he was doing on the day of the crimes.

3. Evidence and Witnesses 285 (NCI4th) murder victim's criminal history and prison infractions – no knowledge by defendant - inadmissible to show self-defense

State v. Smith, 337 N.C. 658 (1994)

The trial court in a murder prosecution did not err by denying defendant's motion to permit defendant to introduce, pursuant to Rule 404(b), prior convictions of the victim for assault with a deadly weapon and burglary, forensic evaluation records from Dorothea Dix Hospital pertaining to the assault conviction, and prison records of the victim's disciplinary infractions where there was no evidence that defendant was aware of the victim's criminal past at the time of the killing, and defendant's stated purpose for offering the evidence was to show that the victim had a propensity for violence and was the aggressor in the affray which led to the fatal shooting, since Rule 404(b) expressly prohibits admission of evidence for this purpose. N.C.G.S. 8C-1, Rule 404(b).

6. Homicide 635 (NCI4th) first-degree murder - self-defense - duty to retreat

State v. Watson, 338 N.C. 168 (1994)

The trial court did not err in a noncapital first-degree murder prosecution by failing to instruct ex mero motu that a person who is without fault and who reasonably believes that an attack is being made with felonious intent has no duty to retreat where the evidence was that the victim quit the argument and returned to his vehicle, defendant left his vehicle, walked to the victim's car and began shooting, and the evidence revealed no attack or attempted attack by the victim.

1. Homicide 393 (NCI4th) noncapital first-degree murder - intoxication - evidence insufficient

State v. Herring, 338 N.C. 271 (1994) ___ S.E.2d ___

1. Homicide 589 (NCI4th) -murder trial -self-defense instruction not required

State v. Ross, 338 N.C. 280 (1994)

The trial court did not err in failing to instruct the jury on the State's burden of proof with regard to self-defense in a first-degree murder trial where all of the evidence, including defendant's statement, tended to show that the victim was unarmed and walking away from defendant when defendant shot him in the back, since defendant was not facing an imminent threat of death or great bodily harm from the victim when he fired the fatal shot, and a reasonable person of ordinary firmness could not have believed it was necessary to use deadly force on the victim.

Homicide 566 (NCI4th) first-degree murder trial - imperfect self-defense - voluntary manslaughter -failure to instruct not error

State v. Exxum, 338 N.C. 297 (1994)

13. Homicide 620 (NCI4th) felony murder - defendant as aggressor - instruction on unavailability of self-defense

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

The trial court did not err by instructing the jury that the defense of self-defense was unavailable to defendant if the jury concluded that defendant killed the victim in the perpetration of a felony where the evidence tended to show that defendant was the aggressor in that he and an accomplice went to the crime scene to rob the victim and another person of marijuana, and no evidence was presented to suggest that the dangerous situation had dissipated at the time of the shooting or that defendant made any effort to declare his intent to withdraw.

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.

20. Assault and Battery 82 (NCI4th); Criminal Law 775 (NCI4th) discharging firearm into occupied vehicle - general intent crime - intoxication no defense

State v. Jones, 339 N.C. 114 (1994)

14. Homicide 556 (NCI4th) first-degree felony murder - refusal to instruct on second-degree murder and manslaughter - alibi defense

State v. Corbett, 339 N.C. 313 (1994)

The trial court did not err in a prosecution for first-degree murder and discharging a firearm into a vehicle by refusing to instruct on second-degree murder and manslaughter where defendant's defense was an alibi. Defendant cannot tell the jury that he was innocent of the crime because he was elsewhere when it occurred and that the inculpatory statements were not true and also demand to have the jury instructed on second-degree murder and manslaughter based on portions of his inculpatory statements which were favorable to him when taken out of context.

1. Homicide 689 (NCI4th) unlawful conduct -instruction on accident not required

State v. Riddick, 340 N.C. 338 (1995)

The trial court was not required to instruct the jury on the defense of accident in a first-degree murder prosecution by defendant's evidence that he fired one shot into the air to scare the victim, the gun went off a second time accidentally and fired the fatal shot when he was startled by a loud noise, and he only intended to scare the victim and not to hurt him where the evidence was uncontroverted that defendant was engaged in unlawful conduct and acted with a wrongful purpose when the killing occurred in that defendant sought out the victim armed with a loaded gun; an altercation ensued during which defendant assaulted the victim, who was unarmed; defendant admitted that he fired the gun once intentionally; and the gun was in defendant's hand when the fatal shot was fired.

13. Rape and Allied Offenses 28, 164 (NCI4th) first-degree sexual offense - diminished capacity no defense

State v. Daughtry, 340 N.C. 488 (1995)

The trial court did not err by failing to instruct on diminished capacity as that defense related to a charge of first-degree sexual offense since first-degree sexual offense is not a specific intent crime, and diminished capacity is thus not a defense to such crime.

3. Homicide 609 (NCI4th) self-defense absence of reasonable belief instruction not required

State v. Lyons, 340 N.C. 646 (1995)

6. Homicide 643, 647 (NCI4th) imperfect defense of habitation theory not recognized instruction on defense of habitation not required

State v. Lyons, 340 N.C. 646 (1995)

2. Homicide 393 (NCI4th) premeditation and deliberation effect of defendant's intoxication

State v. Lambert, 341 N.C. 36 (1995)

There was no merit to defendant's contention that evidence of her voluntary intoxication required the trial court to instruct the jury on second-degree murder because her consumption of alcohol and cocaine negated her ability to premeditate and deliberate where officers testified that defendant was not as emotional as most people were in such situations and that they found cocaine and more than a case of empty

beer cans in the bedroom where she was sleeping; there was no direct evidence of recent consumption of alcohol or drugs; evidence tended to show that defendant acted in a rational manner in her conversations with the police from the time she made the emergency phone call; and such evidence, at best, tended to show defendant's mere intoxication.

Homicide 596 (NCI4th) second-degree murder and assault instructions belief that killing necessary

State v. Richardson, 341 N.C. 585 (1995)

The trial court did not err in a prosecution in which defendant was convicted of second-degree murder and assault with a deadly weapon with intent to kill inflicting serious injury by instructing the jury that it could find that defendant acted in self-defense only if defendant reasonably believed that under the circumstances it was necessary "to kill" the victims. The self-defense instruction in this case did not read into self-defense an element that is not part of second-degree murder and did not impermissibly lessen the State's burden of disproving defendant's claim of self-defense. The instruction as given can be read consistently and sensibly without changing the language of the first element of self-defense to read that "it was reasonably necessary to shoot [or use deadly force] in order to save himself from death or great bodily harm." The language in *State v. Watson, 338 N.C. 168*, that indicates otherwise is expressly disavowed.

1. Evidence and Witnesses 264 (NCI4th) first-degree murder victim's reputation for violence defense of accident

State v. Goodson, 341 N.C. 619 (1995)

There was no error in a first-degree murder prosecution in the exclusion of testimony as to the victim's reputation for violence where defendant contended that the killing resulted from an accident. It was held in *State v. Winfrey, 298 N.C. 260*, and *State v. McCray, 312 N.C. 519*, that evidence of a victim's violent character is irrelevant in a homicide case when the defense of accident is raised.

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.

6. Homicide 612, 707 (NCI4th) instructions imperfect self-defense voluntary manslaughter reasonable belief in need to kill

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

The trial court did not err by instructing the jury that it could return a verdict of voluntary manslaughter for imperfect self-defense only if defendant reasonably believed it was necessary to kill in self-defense.

5. Homicide 620 (NCI4th) self-defense instruction defendant as aggressor sufficiency of evidence to support instruction

State v. Burton, 119 N.C. App. 625 (1995)

The evidence supported the trial court's instruction that defendant would not be entitled to the benefit of self-defense if he were the aggressor with the intent to kill or inflict serious bodily harm upon the victim where the evidence tended to show that the unarmed victim cursed and taunted defendant and his codefendant from outside their trailer; and defendant and the codefendant came outside and began shooting, with defendant telling the codefendant, "Shoot him, shoot him. I'll get you out of jail."

9. Homicide 630 (NCI4th) second-degree murder reasonable belief in need to kill victim self defense instruction proper

State v. Burton, 119 N.C. App. 625 (1995)

The trial court did not err in instructing that defendant would be excused of second-degree murder if it appeared to him and he believed it to be necessary to kill the victim, not just to use deadly force, in order to save himself or others from death or great bodily harm where all of the evidence showed an intent to kill.

Evidence and Witnesses 285 (NCI4th) victim's past violence no showing that defendant knew about violence no apprehension of bodily harm evidence properly excluded

State v. Brown, 120 N.C. App. 276 (1995)

In a prosecution of defendant for the murder of her husband, the trial court did not err in excluding testimony by the husband's ex-girlfriend concerning his violent and abusive behavior which occurred six years

before defendant shot her husband, since such testimony failed to establish that defendant knew of her husband's abusive behavior toward his ex-girlfriend and that his past violence put her in reasonable apprehension of bodily harm.

2. Homicide 663 (NCI4th) murder by lying in wait specific intent not required voluntary intoxication irrelevant

State v. Aikens, 342 N.C. 567 (1996)

Voluntary intoxication is irrelevant to a charge of first-degree murder by lying in wait, a crime that does not require a finding of specific intent, because voluntary intoxication may only be considered as a defense to specific intent crimes.

Evidence and Witnesses 168, 959 (NCI4th) uncommunicated threats - state of mind admissibility to show self-defense - exclusion as prejudicial error

State v. Ransome, 342 N.C. 847 (3-8-1996)

In a prosecution for two first-degree murders in which defendant presented evidence that he shot and killed the victims in self-defense, the trial court erred by excluding hearsay statements made by the victims to two witnesses, but not communicated to defendant, that the victims wanted to fight defendant and intended to "get" him, since the statements were admissible under the state of mind exception to the hearsay rule set forth in N.C.G.S. 8C-1, Rule 803(3), and were relevant to support defendant's contention that the victims were the aggressors in the fatal confrontation with defendant. This error was not cured by the admission of defendant's testimony about threats one victim made to him during a confrontation with both victims the afternoon prior to the killings since the fact that the victims had made a series of threats against defendant, both communicated and uncommunicated, had a stronger tendency to show that they were the aggressors in the fatal confrontation than the fact that one victim threatened defendant solely during the heat of another confrontation.

Homicide 380 (NCI4th) murder trial - self-defense instruction not required

State v. Williams, 342 N.C. 869

A defendant on trial for first-degree murder was not entitled to an instruction on self-defense because defendant could not have subjectively believed it necessary to kill the victim in order to save himself from death or great bodily harm, and no such belief could have been objectively reasonable, where defendant testified that he fired his pistol three times into the air to scare a group from Tarboro and make them retreat so he could leave the area during a second confrontation between a friend of defendant and the Tarboro group,

Homicide § 588 (NCI4th) battered woman syndrome self-defense instruction not appropriate

State v. Grant, 343 N.C. 289 (1996)

Evidence presented by the defendant in a first-degree murder trial that she suffered from battered woman syndrome did not entitle defendant to an instruction on self-defense.

4. Criminal Law § 771 (NCI4th) long term voluntary intoxication insanity instruction refused

State v. Myers, 123 N.C. App. 189 (1996)

13. Homicide § 113 (NCI4th) noncapital first-degree murder voluntary intoxication failure to instruct

State v. Scott, 343 N.C. 313 (1996)

The trial court did not err by failing to instruct on voluntary intoxication as a defense to first-degree murder where the evidence shows that defendant may have been highly intoxicated but does not show that defendant was utterly incapable of forming a deliberate and premeditated purpose to kill.

5. Homicide § 668 (NCI4th) capital murder voluntary intoxication refusal to instruct

State v. Williams, 343 N.C. 345 (1996)

4. Homicide § 663 (NCI4th) voluntary intoxication instruction not required

State v. Boyd, 343 N.C. 699 (1996)

The trial court was not required to instruct on voluntary intoxication in a prosecution for two first degree murders where the combined testimony of defendant and other witnesses established that defendant was intoxicated at the time of the murders, but defendant failed to produce substantial evidence that he was so intoxicated that he could not form a deliberate and premeditated intent to kill.

5. Criminal Law § 774 (NCI4th); Homicide § 694 (NCI4th) defense of unconsciousness or automatism instruction not required

State v. Boyd, 343 N.C. 699 (1996)

The trial court did not err by refusing to instruct on the defense of unconsciousness or automatism in a prosecution for two first-degree murders where defendant relied only upon his own self-serving testimony at trial that he could not remember many of his actions on the day of the crimes, attributing his memory loss to flashbacks from his experiences in Vietnam; defendant's testimony was contradicted by an inculpatory

statement he gave to police within hours of committing the murders in which he was able to recall many of the graphic details of the murders; and neither of defendant's expert witnesses gave testimony in support of defendant's unconsciousness claim.

7. Homicide § 566 (NCI4th) - imperfect self-defense - lesser included offense - no evidence of necessity to kill

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

The trial court properly concluded that the evidence did not support a jury instruction on the lesser included offense of attempted voluntary manslaughter on the basis of imperfect self-defense because there was no evidence that either defendant believed it was necessary to kill the victims in order to save himself from death or great bodily harm where the evidence tended to show that defendants drove their vehicle at high speeds pursuing the victims' vehicle; defendants pulled alongside the victims' vehicle before shooting at the victims; and at all times defendants had every opportunity to alleviate danger to themselves and others without resorting to deadly force. One defendant's self-serving statements that defendants were "scared" that the victims would run them off the road was not evidence that either defendant formed a belief that it was necessary to kill in order to save himself.

2. Assault and Battery 8 - self-defense pleaded - violent nature of victim - evidence improperly excluded

State v. Hall, 31 N.C. App. 34 (1976)

In a prosecution for assault with a deadly weapon with intent to kill inflicting serious injury where defendant claimed self-defense, the trial court erred in sustaining the State's objection to defendant's testimony that the victim of the assault had previously told defendant that he had shot somebody with his pistol, since the evidence was admissible as bearing on the reasonableness of defendant's apprehension that the victim would harm him;

5. Homicide 19.1 - self-defense - character of victims - specific example of misconduct excluded – no error

State v. Shoemaker, 80 N.C. App. 95 (1986)

The trial court did not err in a murder and assault prosecution in which defendant claimed self-defense by not allowing a State trooper to testify about a specific instance of misconduct of the victims indicating their propensity for violence where there was no evidence showing that defendant was aware of the incident. N.C.G.S. 8C-1, Rule 405 (b).

1. Homicide 17.2, 19.1 - reputation of victim - threats against defendant - not admissible

State v. Jones, 83 N.C. App. 593 (1986)

The trial court did not err in a murder prosecution by refusing to admit evidence of the victim's history and reputation for violence and evidence of a threat the victim had made to defendant where defendant's own evidence showed that, at least at the time of the fatal shot to the head, the deceased did not present any threat of imminent harm to the defendant or appear to be doing so.

3. Evidence and Witnesses §§ 2172, 2293 (NCI4th) - expert testimony - rage reaction - exclusion of personal experience

State v. Laws, 345 N.C. 585 (1997)

In a prosecution for first-degree murder in which defendant contended that he killed the victim in **self defense** in response to a threatened homosexual assault, the trial court did not err by refusing to permit defendant's expert witness to testify about a "rage reaction" experienced by the witness in his personal life since (1) the witness properly gave his expert opinion that a rage reaction could possibly have caused defendant to kill the victim and explained his opinion by relating the general characteristics exhibited by those who experience rage reaction and by enumerating the facts upon which his opinion was based; (2) the excluded testimony was not admissible as a basis for the witness's expert opinion under Rule of Evidence 703 where the witness testified that the basis for his opinion was his interview with defendant and defendant's testimony in court; and (3) the excluded testimony was irrelevant as defendant did not show how a rage reaction experienced by someone other than defendant makes it more or less probable that defendant experienced a rage reaction. N.C.G.S. § 8C-1, Rule 703.

6. Homicide § 612 (NCI4th) - self-defense - instructions - reasonable belief in need to kill

State v. Laws, 345 N.C. 585 (1997)

The trial court did not commit plain error by instructing the jury that perfect and imperfect self-defense require the defendant to have a **reasonable belief in the need to kill in self-defense.**

16. Homicide § 368 (NCI4th) - first-degree murder - mere presence rule - evidence sufficient to convict

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

The trial court did not err in a first-degree murder prosecution by denying defendant Harris's motion to dismiss where Harris contended that the

evidence was insufficient to support his conviction under the "friend" exception to the mere presence rule. The evidence demonstrates that Harris encouraged and intended to assist Gaines, that Gaines knew of Harris's support and encouragement, and that Harris was not merely present.

7. Evidence and Witnesses § 284 (NCI4th) - defendant's prior violent acts - no claim of self-defense - inadmissibility

State v. Strickland, 346 N.C. 443 (1997)

The trial court in a first-degree murder trial did not err by excluding testimony by defendant's girlfriend about defendant's past violent conduct against his wife or about the victim's threats to "whip [defendant's] tail" on the night of the murder where defendant did not claim self-defense but claimed that the killing was an accident.

3. Homicide § 523 (NCI4th) - second-degree murder - diminished mental capacity - not a defense to malice

State v. Page, 346 N.C. 689 (1997)

The trial court did not err in a murder prosecution by not instructing the jury that diminished mental capacity could negate the element of malice required for a second-degree murder. Second-degree murder is the unlawful killing of a human being with malice but without premeditation and deliberation and diminished capacity not amounting to legal insanity is not a defense to the element of malice in second degree murder.

4. Assault and Battery § 60 (NCI4th) - assault on an officer - diminished capacity - not a defense - distinction between general intent and specific intent not abolished

State v. Page, 346 N.C. 689 (1997)

The trial court did not err by not instructing the jury to consider diminished mental capacity as a defense to seven counts of assault with a deadly weapon on a government officer. This felony may be described as a general-intent offense because the jury is not required to find that defendant possessed any intent beyond the intent to commit the unlawful act, which will be inferred or presumed from the act itself. Knowledge of the victim's status as a government officer is simply a fact that the State must prove; it is not a state of mind to which the diminished-capacity defense may be applied. Defendant's invitation to dispense with the distinction between specific-intent and general-intent crimes was declined; the diminished-capacity defense is not available to negate the general intent required for a conviction of assault with a deadly weapon on a government officer.

3. Constitutional Law § 352 (NCI4th); Criminal Law § 18 (NCI4th Rev.) - diminished capacity defense -order for additional mental examination - rebuttal by State

State v. Clark, 128 N.C. App. 87 (1997)

The trial court's order that defendant undergo a third psychiatric evaluation for the purpose of allowing the State to rebut defendant's diminished capacity defense based on evaluations by two defense psychiatrists did not violate defendant's right against self-incrimination and his right to present a defense.

9. Homicide - self-defense - duty to retreat - failure to instruct - harmless error

State v. Hayes, 130 N.C. App. 154 (1998)

A defendant on trial for killing his wife with a baseball bat was not entitled to an instruction on self defense, and any error in the instruction given from the trial court's failure to inform the jury that defendant had no duty to retreat in his own home was harmless, where the evidence showed that the sixty-year-old defendant was assaulted by his wife when she threw a hammer at him which struck him on the leg, kicked him and attempted to hit him with a baseball bat; defendant wrestled the bat from her and after obtaining sole possession of the bat proceeded to strike her multiple times about her body with the bat, causing her death; and there was no evidence in the record that the victim presented any threat to the defendant after he acquired the bat from her.

8. Criminal Law § 786 (NCI4th Rev.) - capital murder - intoxication - instruction refused - insufficient evidence of intoxication at time of crime

State v. Richmond, 347 N.C. 412 (1998)

The trial court did not err in a capital prosecution for the first-degree murders of a mother and two children and the first-degree rape of the mother by refusing to instruct the jury on voluntary intoxication where defendant argued that the evidence showed that he had consumed crack and alcohol on the night of the murders, but the evidence at best showed that he was intoxicated at some time prior to the murders. There is little evidence of the degree of his intoxication at the time of the murders. There is evidence that defendant methodically killed everyone in the house, leading one victim into the bathroom and sitting another on the edge of the bed, and that he tried to hide his crimes, which is indicative of a capacity for premeditation and deliberation. Defendant has not made the necessary showing that he was utterly incapable of forming the requisite intent.

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.

1. Criminal Law - abandonment of attempted murder - instruction denied - no error

State v. Gartlan, 132 N.C. App. 272 (1999)

The trial court did not err in a prosecution for attempted murder by denying defendant's request for jury instructions on the defense of abandonment. The evidence showed that defendant intended to kill his children; in furtherance of that purpose, while the children were in their beds at night, he started his car with the garage door closed and all of the children were exposed to carbon-monoxide poisoning, exhibiting physical symptoms from the exposure. Only after defendant observed his younger daughter turning blue did he decide that he could no longer continue; defendant's actions amounted to more than mere preparation to commit murder and he could not legally abandon the crime of attempted murder after committing these overt acts.

14. Criminal Law - automatism - failure to instruct - no error

State v. Morganherring, 350 N.C. 701 (1999)

The trial court did not err in a capital prosecution for first-degree murder by failing to instruct the jury on the defense of automatism where the evidence clearly supported the instruction given on voluntary intoxication and the defenses of voluntary intoxication and automatism are fundamentally inconsistent. Additionally, defendant failed to present evidence which would support an instruction on automatism.

2. Criminal Law - duress - not murder defense - diary lost by State

State v. Cheek, 351 N.C. 48 (1999)

Duress is not a defense to murder in this state; therefore, defendant was not denied a fair trial on a murder charge because the State lost and could not provide to defendant a diary of a deceased accomplice which purportedly supported defendant's contention that the accomplice was a violent person and that defendant participated in the murder because of coercion and duress by the accomplice.

1. Criminal Law - defenses - spousal coercion - valid

State v. Owen, 133 N.C. App. 543 (1999)

The defense of spousal coercion, though created at a time when women could not testify for themselves and now outdated, has not been abolished by the North Carolina Supreme Court and remains a valid defense.