

NORTH CAROLINA DECISIONS UPHOLDING CRIMINAL CONVICTIONS FOR USE OF GASOLINE OR FIRE AS A "DEADLY WEAPON," "DANGEROUS WEAPON," OR "DANGEROUS INSTRUMENT"

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Several North Carolina legal decisions have affirmed criminal convictions based upon the use of gasoline or fire as a "deadly weapon," "dangerous weapon" or "dangerous instrument," where the defendant's use of gasoline or fire manifested some intent to threaten or produce death or bodily harm to the victim. In light of the heinous nature of fire-related crimes and the severity of injuries they produce, this article is to provide fire service representatives, law enforcement personnel and prosecutors with North Carolina legal authority facilitating convictions for fire crimes beyond the customary charges of arson and intentional burning.

I. CONVICTIONS BASED UPON THE USE OF GASOLINE AS A "DEADLY WEAPON" OR "DANGEROUS WEAPON"

A. Gasoline as a "Deadly Weapon"

State v. Hales, 344 N.C. 419, 474 S.E.2d 328 (1996)(affirming conviction for felony murder, first-degree murder based upon premeditation and deliberation, and willfully and wantonly setting fire to a dwelling place of which defendant was an occupant, under North Carolina's felony murder rule, § 14-17, N.C.G.S., finding that evidence showing defendant used gasoline and fire to burn an occupied mobile home clearly supported a finding that the gasoline and fire were used in combination as a "deadly weapon.")

B. Gasoline as a "Dangerous Weapon" or "Hazardous Weapon"

State v. Cockerham, 129 N.C. App. 221, 497 S.E.2d 831 (1998), rev. denied, 348 N.C. 503 (1998)(affirming conviction for attempted malicious injury with an incendiary material, attempted robbery with a dangerous weapon, and conspiracy to commit robbery with a dangerous weapon after defendant and an accomplice threw gasoline in the face of a grocery store employee, placing him in a life-threatening position and instilling fear that he would be lit on fire, with the use of gasoline constituting use of a "dangerous weapon" under the armed robbery statute, § 14-87, N.C.G.S.)

State v. Norwood, 344 N.C. 511, 476 S.E.2d 349 (1996), cert. denied, 520 U.S. 1158, 117 S.Ct. 341, 137 L.Ed.2d 500 (1997)

(affirming conviction for first-degree felony murder and willfully burning a building, after defendant doused a convenience store clerk and the area surrounding him with

gasoline and threw a burning paper bag into the store during business hours, and upholding death penalty for aggravating circumstance under § 15A-2000(e)(10), N.C.G.S., based upon finding that a can of gasoline, when used in conjunction with a burning paper bag, constitutes a device that has the potential to kill more than one person.)

II. CONVICTIONS BASED UPON THE USE OF FIRE AS A "DEADLY WEAPON"

State v. Riddick, 315 N.C. 749, 340 S.E.2d 55 (1986)(affirming conviction for first-degree murder, first-degree arson, and assault with a deadly weapon inflicting serious injury, after defendant set fire to a house in which a five year old child was sleeping and was burned to death, finding that fire is an "instrument" and can, in and of itself, constitute a "deadly weapon.")

III. OTHER "INSTRUMENTALITIES" OF FIRE HELD TO BE A "DEADLY WEAPON"

State v. Avery, 315 N.C. 1, 337 S.E.2d 786 (1985)(affirming conviction for several offenses, including first-degree murder, after defendant ignited two fire bombs in the medical department of a building and as he was escaping from the building, killed someone by shooting him in the chest with a rifle and ignited another fire bomb in the building, finding that for purposes of the felony-murder rule, evidence that the defendant shot his victim prior to fire-bombing the building again was sufficient to establish that the defendant killed his victim in perpetration of the felony of attempting to burn the building, constituting a felony committed with the use of a fire bomb as a "deadly weapon.")

CONCLUSION

Fire service, law enforcement personnel and prosecutors should take advantage of North Carolina legal authority facilitating convictions and use the law to fight fire with fire by punishing fire-related crimes to the fullest extent possible, beyond the usual convictions for arson and intentional burning.

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