

Recent NC Law On Felony Murder Based Upon Arson

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As recognized in State v. Simmons, 2008 WL 5061145 (N.C.App.12/2/08) (Slip. Op. at p. 4), North Carolina law provides that, "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 committed or attempted with the use of a deadly weapon." State v. Gibbs, 335 N.C. 1, 51, 436 S.E.2d 321, 350 (1993) These enumerated felonies include **arson**, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon. N.C. Gen.Stat. § 14-17 (2007). For felony murder, there need not be a "causal relationship" between the underlying felony and the homicide, only an "interrelationship." State v. Terry, 337 N.C. 615, 622, 447 S.E.2d 720, 724 (1994). "In felony murder, the killing may, but need not, be intentional. There must, however, be an unbroken chain of events leading from the attempted felony to the act causing death, so that the homicide is part of a series of events forming one continuous transaction." Gibbs, 335 N.C. at 51-52, 436 S.E.2d at 350 .

In State v. Brewington, 2009 WL 234816 (N.C.App. 2/3/09), the North Carolina Court of Appeals dismissed an appeal by a criminal defendant who had been convicted in Wake County Superior Court of one count of first degree murder under the first degree felony murder rule, with arson being the underlying felony, and on the basis of malice, premeditation, and deliberation.

The evidence at trial tended to show that defendant previously resided with the victim at his home in Holly Springs, but defendant had moved out. On the night of the murder, defendant went to the victim's home, they drank a beer and an argument ensued. The victim attempted to strike defendant but missed, and swung again hitting defendant on the chin. Defendant picked up a piece of wood and hit the victim in the chest and again in the face. A woman who was also at the home heard the two men arguing, saw the victim on the floor and ran out of the house. Defendant followed her and they proceeded to go buy beer and cigarettes at a nearby grocery store. On the way back, defendant bought some crack cocaine. He and the woman went to another home and did drugs. Defendant and the woman later went back to the victim's house to check on him. When they got to the victim's house, defendant stated he believed the victim was dead because he was in the same position as when defendant left him after striking him. Defendant stated that he panicked and poured fluid used to ignite a wood stove onto a "throw," lit it, and threw it on the floor. He then left and went back to the other home where he continued to smoke and drink. Defendant was later arrested and confessed to police that he killed the victim and burned the residence.

The evidence showed that there was a crowbar in the room near the victim's charred body. The cause of death was blunt force trauma to the skull, which according to the medical examiner could have been caused by either a crowbar or a piece of wood. The medical examiner testified that the victim did not have soot in his lungs, which likely

meant that he was dead before the fire was set. The medical examiner further testified that without treatment the victim would have died within ten minutes of his skull fracture.

Judge Kenneth Titus sentenced defendant to life imprisonment without parole. Defendant appealed, arguing that the trial court erred in denying his request for a jury instruction on continuous transaction with regard to felony murder. Defendant also argued that the trial court erred in denying his motion to dismiss the charge of felony murder due to insufficiency of evidence. Defendant contended that the evidence was insufficient to show that he committed the underlying felony of arson while the victim was alive.

The North Carolina Court of Appeals determined that it did not need to reach the merits of the appeal because defendant was found guilty of first degree murder under the first degree felony murder rule, as well as on the basis of malice, premeditation, and deliberation. Defendant's arguments on appeal concerned only the charge of felony murder, but did not assign error to any aspect of the trial regarding first degree murder on the basis of malice, premeditation, and deliberation. Thus, even if the appellate court found reversible error as to issues related to the felony murder rule, the conviction would still stand because the jury also found that defendant murdered the victim with malice, premeditation, and deliberation. The appellate court dismissed defendant's appeal, holding that they need not determine any issue regarding the first degree murder conviction based on malice, premeditation, and deliberation since defendant made no argument as to this conviction. Thus, the conviction for first degree murder based on malice, premeditation, and deliberation stood, and defendant's remaining arguments with regard to the first degree murder conviction based on felony murder were rendered moot.

See also State v. McLemore, 343 N.C. 240, 249, 470 S.E.2d 2, 7 (1996)(finding that although defendant should not have been convicted of felony murder, the verdict of first degree murder could not be disturbed because the evidence supported a conviction based on premeditation and deliberation), citing State v. Thomas, 325 N.C. 583, 593, 386 S.E.2d 555, 560-61 (1989) (finding premeditation and deliberation is a theory by which one may be convicted of first degree murder, and felony murder is another such theory. Criminal defendants are not convicted or acquitted of theories; they are convicted or acquitted of crimes.")