

## **Criminal Procedure**

### **Jury Instructions**

[State v. Frazier](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (July 5, 2016). (1) In this case in which the defendant was convicted of felony murder with the underlying felony being child abuse, the trial court did not err by denying the defendant's request to instruct the jury on premeditated and deliberate murder and all lesser included offenses. There was no evidence that the defendant possessed a specific intent to kill formed after premeditation and deliberation the evidence showed that the defendant "snapped" and "lost control." (2) Second-degree murder is not a lesser included offense of first-degree felony murder. (3) The fact that the evidence was conflicting with respect to the defendant's intent to commit felony child abuse (the underlying felony for felony murder) did not require the trial court to instruct the jury on lesser included offenses of felony child abuse. The fact that the trial court submitted the pattern of instruction on automatism, did not change this result; automatism is a complete defense to a criminal charge and did not render any of the elements of felonious child abuse and conflict.

## **Arrest, Search and Investigation**

### **Stops**

[State v. Goins](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (July 5, 2016). Over a dissent the court held that the trial court erred by denying the defendant's motion to suppress all evidence obtained pursuant to a stop of his vehicle. The stop occurred in an area of high crime and drug activity. The defendant's mere presence in such an area however cannot stand alone to provide the necessary reasonable suspicion for the stop. Although headlong flight can support a finding of reasonable suspicion, the court found the evidence of flight insufficient in this case to show headlong flight. Among other things it noted that there was no evidence that the defendant personally observed the police car across the street before he left the premises and the defendant did not break any traffic laws in his exit from the premises. Additionally, although the officer suspected that the defendant might be approaching a man at the premises to conduct a drug transaction, the officers did not see those individuals conducting any suspicious activity. The officers suspicion that the defendant was fleeing from the scene, without more, did not justify the stop.

## **Criminal Offenses**

### **Homicide**

[State v. Frazier](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (July 5, 2016). In this case where the defendant was convicted of felony murder with the underlying felony being felony child abuse, the court rejected the defendant's argument that the merger doctrine prevents conviction of first-degree felony murder when there is only one victim and one assault. The court however noted that a defendant could not be sentenced for both the underlying felony and first-degree felony murder.

### **Child Abuse**

[\*State v. Frazier\*](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (July 5, 2016). Child-abuse under G.S. 14-318.4(a) requires that the defendant intentionally inflict serious physical injury on a child or intentionally commit an assault on the child which results in serious physical injury. These are two separate prongs and the State is not required to prove that the defendant specifically intended that the injury be serious; proof that the defendant intentionally committed an assault on the child which results in serious physical injury is sufficient.