


Capital Case Law and Death Penalty Litigation:
JURY INSTRUCTIONS

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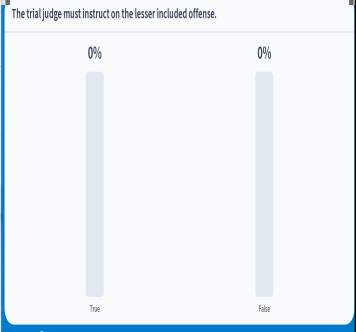
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There is a duty to charge on any lesser included offense raised by the evidence . . .
. . . even in the absence of a request for the instruction.

The trial judge must instruct on the lesser included offense.

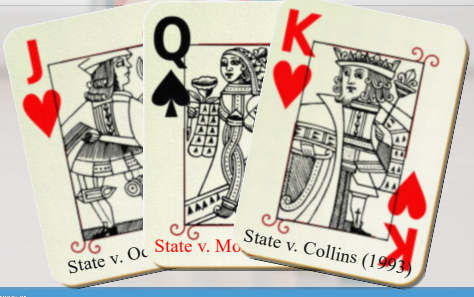


Response	Percentage
True	0%
False	0%



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Must the judge instruct on the lesser included offense?

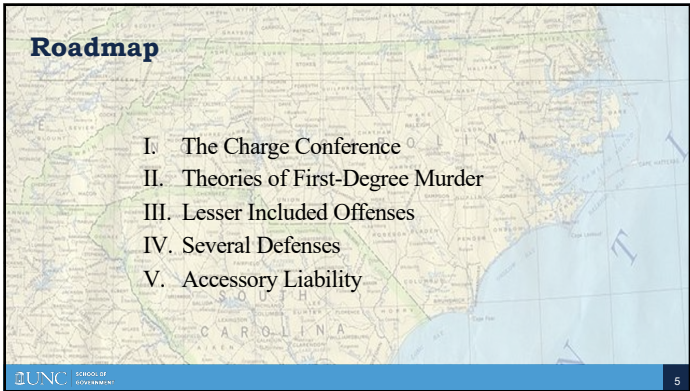


State v. Ocasio State v. Moore State v. Collins (1993)

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Roadmap



- I. The Charge Conference
- II. Theories of First-Degree Murder
- III. Lesser Included Offenses
- IV. Several Defenses
- V. Accessory Liability

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THE CHARGE CONFERENCE

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The Judge Must Conduct a Charge Conference.




- Before arguments to the jury, the judge must hold a conference on instructions with the attorneys of record.
- The conference must be recorded, and all instructions given and tendered become a part of the record.
- The conference must be conducted out of the presence of the jury.
- **Defendant is entitled to be present at the conference.**

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The Parties May Tender Instructions.

An opportunity must be given to the parties to request additional instructions or object to proposed instructions.




- Any party may tender written instructions.
Special instructions should be submitted in writing.
- A party tendering instructions must furnish copies to the other parties at the time of tendering to the judge.
- Judge must inform the parties of what, if any, parts of the tendered instructions will be given.

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The Judge Shall not Express an Opinion.



In instructing the jury,

- The judge shall not express an opinion as to whether or not a fact has been proved.
- The judge shall not be required to state, summarize or recapitulate the evidence.
- The judge shall not be required to explain the application of the law to the evidence.

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THEORIES OF FIRST-DEGREE MURDER



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First-Degree Murder: Theory #1

As an act to divide the crime of murder into two degrees and define the same.

The General Assembly of North Carolina do enact :

Factors to consider

- absence of provocation by victim;
- conduct and statements of defendant;
- threats and declarations of defendant;
- ill-will or previous difficulties;
- lethal blows after victim is felled;
- evidence of brutality in the killing;
- nature & number of victim's wounds;

Premeditation & Deliberation

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First-Degree Murder: Theory #2

As an act to divide the crime of murder into two degrees and define the same.

The General Assembly of North Carolina do enact :

Committed in the perpetration of any:

- arson,
- rape,
- sex offense,
- robbery,
- kidnapping,
- burglary,
- other felony with deadly weapon.


Felony Murder

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Additional Theories of First-Degree Murder

As an act to divide the crime of murder into two degrees and define the same...

- Poison,
- Lying in wait,
- Imprisonment,
- Starving,
- Torture,
- Committed by means of a nuclear, biological, or chemical weapon of mass destruction.



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Special Verdict Sheet: Scenario #1

CHAPTER 35
As an act to divide the crime of murder into two degrees and define the same...


Jury should be instructed to indicate **which theory** of first-degree murder supports the conviction.

- Affects whether defendant may be sentenced for other felonies.
- Affects whether certain aggravating factors may be submitted at capital sentencing.
- Could affect whether sentence is upheld on appeal.



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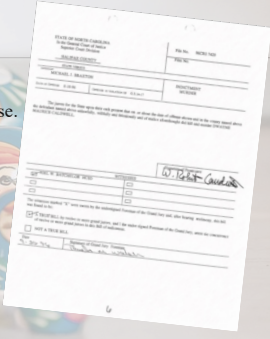
LESSER-INCLUDED OFFENSES

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Murder Indictment Issues


- Indictment may not be waived in a capital case.
- A defendant may be indicted for first-degree murder without alleging all the elements.
- Indictment for a greater offense will support conviction for a lesser included offense.



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Lesser Included Offenses: Correct in Law.




- A trial court must instruct the jury on lesser included offenses supported by the evidence.
- A trial court's jury instructions should be
 - a correct statement of the law and
 - supported by the evidence.

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Lesser Included Offenses: Supported by Evidence.



- An instruction on a lesser-included offense must be given only if the evidence would permit the jury rationally to find the defendant guilty of the lesser offense.
- If the State's evidence fully satisfies each element of first-degree murder, and there is no conflicting evidence, the trial court should not instruct on lesser-included offenses.
- To identify a conflict in the evidence, however, the defendant must rely on more than his own statements denying his involvement in the crime.

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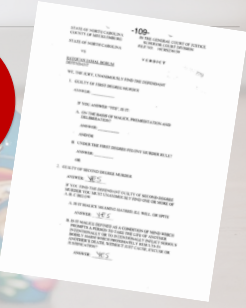
Special Verdict Sheet: Scenario #2

Malice #1
ill will,
hatred, etc.

Malice #2
"depraved
heart"
CLASS B2

Malice #3
intentional
wounding


- A person who commits second degree murder shall be punished as a Class B1 felon, except . . .
- A person who commits second degree murder shall be punished as a Class B2 felon if the malice necessary is "depraved heart" malice.



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SEVERAL DEFENSES



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Diminished Capacity




- Defendant may claim he or she was unable to premeditate, deliberate, or form specific intent to kill.
- Defendant may claim he or she was unable to form specific intent required for underlying felony.
- Burden is on defense to produce sufficient evidence to warrant instruction on diminished capacity.

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Voluntary Intoxication

- Defendant may claim he or she was unable to premeditate, deliberate, or form specific intent to kill.
- Defendant may claim he or she was unable to form specific intent required for underlying felony.
- Burden is on defense to produce sufficient evidence to warrant instruction on voluntary intoxication.



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Perfect or Imperfect Self-defense



- Defendant may claim he or she reasonably believed it was necessary to use deadly force in self-preservation.
- Common law privilege of perfect self-defense has been supplanted by statute (G.S. 14-51.3).
- Burden is initially on the defense to introduce sufficient evidence to place the matter in issue.

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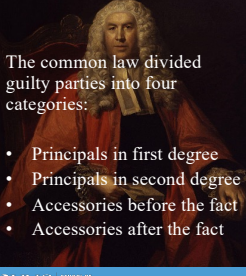
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ACCESSORY LIABILITY

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Principals and Accessories



The common law divided guilty parties into four categories:


- Principals in first degree
- Principals in second degree
- Accessories before the fact
- Accessories after the fact

- By statute, all distinctions between accessories before the fact and principals to the commission of a felony are **abolished**.
- Every person previously guilty as an accessory before the fact is guilty as a principal to that felony.
- **However**, every person
 - (1) previously guilty as accessory before the fact,
 - (2) convicted of a capital felony,
 - (3) based solely on the uncorroborated testimony of another participant in the crime,
 is guilty of a **Class B2** felony.

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Multiple Defendants' Guilt Determined Separately



- When two or more defendants
 - (1) are jointly tried
 - (2) for the same offense,
 a charge which is susceptible to the construction that the jury should convict all if it finds one guilty is **reversible error**.
- It is not necessary to give wholly separate instructions, provided the judge gives
 - (1) a separate final mandate as to each defendant, or
 - (2) otherwise instructs that the guilt of one is not dependent on the guilt of the other.

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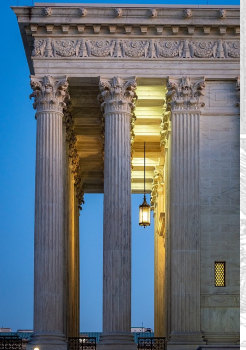
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Enmund v. Florida (1982)

The Eighth Amendment prohibits the death penalty on one who

- (1) aids and abets a felony
- (2) in the course of which a murder is committed by others
- (3) but who does not himself kill, or intent that a killing take place or that lethal force will be employed.

But see *Tinson v. Arizona* (1987).



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Special Verdict Sheet: Scenario #3

Guilt Phase:

Accessory before the Fact

NOTE: READ! It is suggested that the following be inserted after the first degree murder finding in the verdict form given the jury when they retire for deliberation.

2. Has the State proved to you beyond a reasonable doubt that there was other evidence in addition to the testimony of (name witness(es)) to establish the defendant's guilt?
Answer (yes or no) _____

Sentencing Phase:

Enmund Issue

Issue One-A:
Do you unanimously find from the evidence, beyond a reasonable doubt, that the defendant himself, killed or attempted to kill the victim?
OR
Intended to kill the victim;
OR
Intended that deadly force would be used in the course of the underlying felony?
OR
Was a major participant in the underlying felony and exhibited reckless indifference to human life?
ANSWER: _____

- When evidence supports the instruction, it is error not to submit the special question to the jury.
- If evidence is conflicting, the conflict must be resolved by the jury before the defendant may be sentenced to death.

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Recapitulation

- I. The Charge Conference
- II. Theories of First-Degree Murder
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