

Merger and Felony Murder: A 2017 Update

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Last week I blogged about [the basic rules for felony murder](#) prosecutions in North Carolina. I promised to return this week with an update on the felony murder rule and the merger doctrine. This post, like [Jeff's 2009 article](#), focuses on the merger rule that bars charges of felony murder that are based upon killings resulting from certain types of felony assaults. It does not address the merger rule that requires the court to arrest judgment on the underlying felony when a defendant is convicted of first-degree murder solely on the basis of felony murder.

What is the merger rule? The merger doctrine holds that felony murder may not be predicated upon a felony that “is an integral part of the homicide” and is “an offense included [i]n fact within the offense charged.” *People v. Ireland*, 70 Cal.2d 522, 539 (1969) (applying this principle where the felonious assault and the homicide were committed against the same victim; holding that defendant could not be convicted of felony murder for killing his wife by assaulting her with a deadly weapon).

What is the rationale for the rule? The merger doctrine exists to prevent every felonious assault that results in a person’s death from rising to the level of first-degree murder. Without the doctrine, a defendant’s intentional assault of another with a deadly weapon resulting in the victim’s death would constitute first-degree murder—regardless of whether the defendant intended to kill the victim. Courts have applied the merger rule to prevent this sort of “bootstrapping,” *id.*, which would negate “lesser homicide charges such as second-degree murder and manslaughter,” see *State v. Jones*, 353 N.C. 159, 170 n.3 (2000) (discussed in detail [here](#)).

Does the merger rule apply in NC? Yes . . . wait, no . . . um, maybe? The state supreme court in *Jones* said, in dicta (and in a footnote), that an assault against a single victim who dies of his injuries **may not** be used as an underlying felony for purposes of the felony murder rule. *Jones*, 353 N.C. at 170 n.3. That’s a yes for the merger rule. On the other hand, North Carolina’s appellate courts have rejected the merger rule’s application in many related contexts. For example, courts have held that a defendant **may be prosecuted** for felony murder for:

a felonious assault on one victim that results in the death of another victim, *State v. Abraham*, 338 N.C. 315 (1994);

discharging a firearm into an occupied vehicle and killing one of its occupants, *State v. Wall*, 304 N.C. 609 (1982); *State v. Jackson*, 189 N.C. App. 747 (2008); and

striking the victim in the head with a machete (the underlying felony) and then strangling her, *State v. Carroll*, 356 N.C. 526 (2002).

That’s a no for the merger rule, at least in these specific contexts.

To further complicate matters, the reasoning in the *Jones* footnote contradicted some of the courts’ earlier explanations of why the merger rule did not apply. For example, the court in *Wall* rejected the “California merger doctrine” even though it considered the discharging of the firearm into the occupied vehicle to be an “integral” part of the homicide. 304 N.C. at 612. The court said that the statute clearly encompassed felonies like this one that were

committed with a deadly weapon and that it was the legislature's role, rather than the court's, to limit the scope of felony murder. *Id.* at 614-615.

So, post-*Jones*, there were several unanswered questions. Did the *Jones* footnote actually state the rule in North Carolina? If so, does the merger rule apply to underlying felonies that involve assaultive conduct but aren't classified as assaults?

What's new? The court of appeals' recent opinion in [State v. Spruiell](#), ___ N.C. App. ___, ___ S.E.2d ___ (April 4, 2017), addresses both questions.

Spruiell was convicted of first-degree murder under the felony murder rule after he fired a single shot into a parked car at close-range, striking and killing the victim. He appealed from his conviction, but the court of appeals found no error. *State v. Spruiell*, 197 N.C. App. 232 (2009) (unpublished op.). Spruiell subsequently filed a motion for appropriate relief, alleging that his appellate counsel rendered ineffective assistance by failing to challenge on direct appeal the felony murder instruction. Spruiell argued that the offense of discharging a weapon into occupied property could not, given the facts of his case, constitute the predicate felony for felony murder. Spruiell distinguished his circumstances from those in *Wall* and *Jackson* on the basis that he fired a single shot at a single victim, whereas the defendants in *Wall* and *Jackson* filed multiple shots at more than one victim.

The trial court granted Spruiell's motion, vacating his convictions and ordering a new trial. The State appealed.

Holding. The court of appeals reversed the trial court's order granting Spruiell a new trial. The appellate court determined that Spruiell failed to demonstrate a reasonable probability that he would have prevailed in his direct appeal had his appellate counsel argued that the offense of discharging a weapon into occupied property could not support his felony murder conviction.

Reasoning. The court of appeals explained that *Jones* and *Carroll* stood for "the limited proposition that a single assault on one victim that leads to that person's death cannot serve as the underlying felony for purposes of the felony murder rule." The superior court considering Spruiell's motion for appropriate relief viewed these cases far more broadly, construing them to say that no offense, regardless of whether it is classified as an assault or some other crime, can serve as the basis for a felony murder conviction when the crime results from a "single assaultive act" against one victim. This interpretation led the superior court to conclude that the offense of discharging a weapon into occupied property, which, like an assault, is an offense against the person, could not support charges of felony murder when it involved firing a single shot directly at the decedent. That interpretation was simply wrong, according to the court of appeals.

The court of appeals cited two recent case as being more instructive regarding the proper application of the merger rule. In *State v. Juarez*, ___ N.C. App. ___, 777 S.E.2d 325 (2015), *rev'd on other grounds*, ___ N.C. ___, 794 S.E.2d 293 (2016), the defendant argued that his discharging a firearm into an occupied vehicle could not support charges of felony murder for the reasons set forth in the *Jones* footnote. The court of appeals rejected this argument, noting that the elements of discharging a firearm into an occupied vehicle differed from those of felony assault crimes and that the court had previously upheld felony murder convictions based on firing a weapon into a vehicle.

Similarly, the court of appeals in *State v. Frazier*, ___ N.C. App. ___, 790 S.E.2d 312 (2016), rejected the defendant's argument that the merger rule barred his conviction for felony murder based on felonious child abuse against a single child that resulted in the child's death. The court explained that "felonious child abuse is among those offenses that address specific types of assaultive behavior that have special attributes distinguishing the offense from other assaults that result in death." *Id.* at ___; 790 S.E.2d at 320. "Therefore," the *Frazier* court stated, "our courts have declined to apply the 'merger doctrine' in cases where the underlying felony (here, child abuse) was not an offense included within the murder." *Id.* The *Spruiell* court rejected the defendant's attempt to distinguish *Frazier* on the basis that the defendant in that case struck the infant with his hand several times whereas Spruiell only shot once. *Spruiell* said the

holding in *Frazier* was not based on the number of blows inflicted.

The takeaway. The *Spruiell* court noted that the state's appellate courts have never recognized an exception to the felony murder rule for the offense of discharging a weapon into occupied property. Thus, future prosecutions for felony murder based on this underlying felony appear to rest on solid ground, regardless of the number of shots fired or the number of victims injured. Felony murder charges based on other crimes that involve assaultive conduct but not the crime of assault also appear to comport with state law. Spruiell summarized the merger doctrine in North Carolina as "at most" precluding "use of the felony murder rule in situations where the defendant has committed one assault crime against one victim and the State seeks to use that assault as the predicate felony for a felony murder conviction."