

Premeditation and Deliberation

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A recent Court of Appeals ([here](#)) dealt with the issue of whether the evidence was sufficient to establish premeditation and deliberation in a first-degree murder case (it was). Since that issue arises with some frequency, I'll address it here.

"Premeditation" means thinking about something beforehand, for some length of time, however short; "deliberation" refers to an intention to kill formed while defendant was in a "cool state of blood." *State v. Bullock*, 326 N.C. 253 (1990); *State v. Ruof*, 296 N.C. 623 (1979); *State v. Blue*, 207 N.C. App. 267 (2010) (the defendant's statement that he formed the intent to kill and contemplated whether he would be caught before he began the attack was sufficient evidence that he formed the intent to kill in a cool state of blood). A cool state of blood does not mean absence of passion and emotion; a person may be capable of forming murderous intent, premeditating and deliberating, yet be prompted and to a large extent controlled by passion at the time of the offense. *State v. Vause*, 328 N.C. 231 (1991). Rather, it means that a killing was committed with a fixed design to kill, regardless of whether the defendant was angry or gripped with passion at the time of the act. *Bullock*, 326 N.C. 253; *Ruof*, 296 N.C. 623. It also means that the defendant's anger or emotion was not so strong as to overcome his or her reason. *State v. Hunt*, 330 N.C. 425 (1991). Premeditation and deliberation need not last for any perceptible length of time. *State v. Walters*, 275 N.C. 615 (1969); *State v. Bynum*, 175 N.C. 777 (1918).

Circumstantial evidence, rather than direct evidence, generally proves premeditation and deliberation. *State v. Bell*, 338 N.C. 363 (1994). Circumstances showing premeditation and deliberation include:

- lack of provocation, *State v. Corn*, 303 N.C. 293 (1981);
- the defendant's conduct before and after killing, *State v. Walker*, 332 N.C. 520 (1992); *State v. Lane*, 328 N.C. 598 (1991); *State v. Freeman*, 326 N.C. 40 (1990),
- the defendant's statements of ill will toward the victim, *State v. Gallagher*, 313 N.C. 132 (1985);
- the defendant's previous assault of the victim, *State v. Simpson*, 327 N.C. 178 (1990);
- previous difficulties between the defendant and the victim, *State v. Bullock*, 326 N.C. 253, 258 (1990);
- threats before and during the killing, *id.*;
- the brutal nature of the killing (such as by strangulation), *State v. Richardson*, 328 N.C. 505 (1991); *State v. Greene*, 332 N.C. 565 (1992);
- blows dealt after the victim is helpless, *Bullock*, 326 N.C. at 258; and
- the nature and number of the victim's wounds, *State v. Watson*, 338 N.C. 168 (1994); *State v. Montgomery*, 331 N.C. 559 (1992); *State v. Vause*, 328 N.C. 231 (1991).

Want to explore further?

For cases in which the evidence sufficiently established premeditation and deliberation, see *State v. Horskins*, ___ N.C. App. ___, 743 S.E.2d 704, 711 (2013) (after words in a night club parking lot the defendant shot the victim, who was unarmed, had not reached for a weapon, had not engaged the defendant in a fight, and did not provoke the defendant's violent response; after the victim fell from the defendant's first shot, the defendant shot the victim six more times; the defendant left the scene and attempted to hide evidence); *State v. Rogers*, ___ N.C. App. ___, 742 S.E.2d 622, 626 (2013) (the victim begged for his life and was shot eight times, primarily in the head and chest, and

there was a lack of provocation); *State v. Broom*, ___ N.C. App. ___, 736 S.E.2d 802, 808 (2013) (the defendant was having an affair with another woman and wanted his wife to terminate her pregnancy; he became angry when his wife said that if they divorced she might move out of the state and take the children with her; and before he shot her, the defendant placed his wife's cell phone out of her reach); *State v. Bonilla*, 209 N.C. App. 576 (2011) (after the defendant and an accomplice beat and kicked the victim, they hog-tied him so severely that his spine was fractured and put tissue in his mouth; due to the severe arching of his back, the victim suffered a fracture in his thoracic spine and died from a combination of suffocation and strangulation); *State v. Bass*, 190 N.C. App. 339, 345 (2008) (the defendant had time to contemplate his actions, threatened the victim, was not provoked, shot the victim in the back, and did not surrender); *State v. Forrest*, 168 N.C. App. 614, 626 (2005) (the defendant attacked an unsuspecting victim and made statements suggesting an intent to kill); and *State v. Dennison*, 171 N.C. App. 504, 509–10 (2005) (the wounds were brutal, the blows multiple, the victim had harassed the defendant, and the defendant left the crime scene).

For cases in which the evidence was insufficient to establish premeditation and deliberation, see *State v. Corn*, 303 N.C. 293, 297–98 (1981) (the victim entered the defendant's home while highly intoxicated, approached the sofa on which the defendant was lying, and insulted the defendant; the defendant immediately jumped up, grabbed a nearby rifle, and shot the victim several times in the chest; the incident lasted only a few moments; there was no evidence that the defendant acted with a fixed design, had sufficient time to weigh the consequences of his actions, previously threatened the victim, or exhibited conduct indicating that he formed any intent to kill before to the incident; there was no significant history of arguments or ill will between the parties and although the defendant fired several shots, there was no evidence that he shot or hit the victim once the victim fell); and *State v. Williams*, 144 N.C. App. 526, 531 (2001) (there was no evidence of animosity, that the defendant and the victim knew each other before incident, or that defendant threatened the victim; when the victim provoked the defendant by assaulting him, the defendant immediately retaliated by firing one shot; the defendant's actions did not show planning or forethought; although the defendant left the scene, he turned himself in the next day).