

## Transferred Intent

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Suppose a defendant acts intending to do one thing but ends up doing something else. For example, suppose the defendant shoots at A, intending to kill A, but misses and kills B, an innocent bystander. Is the defendant criminally liable for the unintended harm to B? Under the doctrine of transferred intent, the answer is yes.

The doctrine of transferred intent provides that when a defendant intends to harm victim A, but ends up harming victim B, the defendant's criminal liability is determined with respect to his or her intent and conduct towards A. *State v. Davis*, 349 N.C. 1, 27 (1998) (quoting *State v. Wynn*, 278 N.C. 513, 519 (1971)). If B is killed, the defendant is guilty or innocent exactly as if the fatal act had killed A. *Id.* (quoting *Wynn*, 278 N.C. at 519). As it is sometimes said, "intent follows the bullet." *Id.* (quoting *Wynn*, 278 N.C. at 519). Thus, under the doctrine, it does not matter whether the defendant intended to injure B; the defendant need only act with the required intent toward someone (here A). *Id.* at 38. There are a number of North Carolina cases on point including *State v. Locklear*, 331 N.C. 239, 244-46 (1992) (doctrine applied as to charge of assault with intent to kill B, who was shot by the defendant while he was shooting to kill B's mother), *Davis*, 349 N.C. at 37-39 (an instruction on transferred intent was proper when the defendant engaged in a shooting spree, intending to harm company management but harming another person who happened to be present in the office at the time), and *State v. Goode*, 197 N.C. App. 543, 550-51 (2009) (instruction on transferred intent was proper as to a charge of attempted murder of B when the defendant drove a car into A and B, intending to kill A). Also, there is a pattern jury instruction on point. N.C. Pattern Jury Instruction – Criminal 104.13 ("If the defendant intended to harm one person but actually harmed a different person, the legal effect would be the same as if the defendant had harmed the intended victim."); see also *Davis*, 349 N.C. at 38 (it is not necessary that the person the defendant intended to harm be named in the jury instructions).

In North Carolina, the doctrine of transferred intent is not limited to situations where an unintended victim suffers harm. Under North Carolina law, the doctrine also permits a conviction when the defendant intended one type of harm but caused another type of harm. Specifically, cases have held that under this doctrine, a defendant may be convicted of discharging a firearm into occupied property when the defendant intended to shoot a person but ended up shooting into property that he or she knew was occupied. *State v. Fletcher*, 125 N.C. App. 505, 512-13 (1997); *State v. Small*, \_\_\_ N.C. App. \_\_\_, 689 S.E.2d 444 (2009). However, application of the doctrine in this context is not without controversy. As a general rule, an intention to cause one type of harm cannot serve as a substitute for a requirement of intention as to another type of harm). 1 Wayne R. LaFave, *Substantive Criminal Law* 350 & 458-60 (2003). Under this general rule, for example, if a defendant intentionally steals a gas meter out of a house, and as a result a woman is made ill by the escaping gas, the defendant's intent to steal does not suffice to establish an intent to injure another. *Id.* at 458-59 (but going on to note that the defendant might be guilty of injuring another in these circumstances if the injury to another offense requires only recklessness or criminal negligence). Of course, exceptions exist, most notably, the felony-murder rule. If while robbing a store with a firearm, the defendant's firearm goes off, killing bystander A, the felony-murder doctrine allows the defendant to be convicted for A's murder. See Jessica Smith, *North Carolina Crimes: A Guidebook on the Elements of Crime* 68 (6<sup>th</sup> Ed. 2007). The felony-murder rule, however, derives from a statutory definition of murder. See G.S. 14-17 (defining murder). The North Carolina cases extending the doctrine of transferred intent from situations where an unintended victim suffers to harm to those where an unintended type of harm occurs did not note the general rule discussed above or acknowledge that their rulings constituted an expansion of the doctrine of transferred intent.

If you have encountered the doctrine of transferred intent in other contexts or have thoughts on these issues, please post a comment sharing your experience and ideas.