

When Charging Murder, Is the Offense Date the Date of the Attack, or the Date of the Victim's Death?

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Suppose that Dan shoots Victor on January 1, and that Victor dies from his wounds, but not until January 3. When a magistrate issues an arrest warrant, or the grand jury returns an indictment, should the date of offense be listed as January 1, the date of the attack? Or January 3, the date of the victim's death?

My view is that either one is probably fine, but that alleging a range of dates spanning the assault and the victim's death is the best solution. Here are summaries of some relevant cases:

- *State v. Price*, 310 N.C. 596 (1984) (defendant shot victim on December 17, but victim did not die until February 5; murder indictment initially listed February 5 as the offense date, but the state moved to, and was allowed to, amend the date to December 17; court characterizes this as “the date the offense occurred” and ruled that the amendment was proper as it did not substantially alter the charge; also states that “the date on the indictment for murder, if erroneous, was not an essential element of the offense” and cites G.S. 15-155, which provides that errors as to date are not fatal defects)
- *State v. Holton*, 284 N.C. 391 (1973) (defendant shot victim in September, but victim did not die until December; indictment gave the September date as the date of the offense; no fatal variance between allegation and proof: “The indictment in this case stated the date on which the fatal injury was inflicted rather than the date on which the death occurred. This Court, as early as 1854 in *State v. Baker*, 46 N.C. 267 [(1854)], held that where an indictment charged the murder as of the date the blow was given, and the evidence revealed that the victim lived for twenty days after receiving the blow and then died, such variance was not material.”)
- *Manning v. State*, 182 S.E.2d 690 (Ga. App. 1971) (indictment alleged “that defendant did kill and murder one Alvin Meeler on June 5, 1969 by shooting him with a pistol” and the court ruled that “there was no fatal variance in the allegata and probata where it appeared that Meeler was shot on June 5, 1969, but languished and died June 11, 1969”)

Sometimes a range of dates is clearly the best solution, as in some child abuse cases where the victim's death is the culmination of a long series of events. *See, e.g., State v. Duncan*, 835 So. 2d 623 (La. Ct. App. 1st Cir. 2002) (original indictment in child abuse murder case alleged that the offense took place on December 19, 2000; state was properly allowed to amend the indictment to “between 12/17/96 and 12/18/2000,” the dates of the child's birth and death; “years of abuse, mistreatment, and starvation” caused the victim's death).