STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
COUNTY OF PENDER	FILE NO. 22CRS050143-700

STATE OF NORTH CAROLINA)
)
)
)
)
v.)
DAVID WESLEY PREVATTE,)
Defendant.)

MOTION TO COMPEL STATE TO DISCLOSE FELONIES IT INTENDS TO SUBMIT TO SUPPORT FELONY MURDER THEORY

NOW COMES the Defendant, by and through counsel, and, pursuant to U.S. Const. Amends. V, VI, VIII, XIV; Const. of N.C. Art. I, §§ 18, 19, 23, 27 and other applicable law, hereby requests the Court order the State to disclose the felony or felonies which it intends to use as the underlying crime(s) to prove first-degree murder under felony murder.

Such disclosure is necessary for the defendant to have proper notice of the crime for which he is being tried. Under our law, a defendant can be convicted of first-degree murder based on a felony for which he has never been charged. See State v. Carey, 288 N.C. 254 (1975), *death sentence vacated*, 428 U.S. 904 (1976). Therefore, notification of what felonies that the State intends to use to support a felony murder conviction is required under the United States and North Carolina Constitutions.

A defendant's right under the state and federal constitutions to confront the accusers and witnesses against him, "includes the right to prepare and present a defense." State v. Canady, 355 N.C. 242, 253 (2002). (constitutional error for trial court to permit State's ballistics expert to testify about results of their test when defendant never had opportunity to examine the test shells

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used by the State's expert to reach his conclusion). This right guarantees that a defendant be given the opportunity to rigorously investigate and challenge the evidence before that evidence is introduced at trial. Id. Defendant cannot adequately and vigorously present a defense in this case unless he has sufficient notice of which felonies the State intends to use against him.

At least one former justice on the North Carolina Supreme Court has recognized how important it is for a defendant to be provided notice of the underlying felony the State is using against him.

> Thus, if the State pursues a felony murder charge against a defendant, it would appear that the State is obligated to somehow inform the defendant of the specific underlying felony it aims to prove at trial. The practical implications of this specific information go to the heart of a defendant's ability to prepare for trial and to defend himself through examination of witnesses, the production of evidence, and argument to the jury.

State v. Garcia, 358 N.C. 382, 432 (Orr, J. dissenting).

Additionally, our state legislature amended N.C.G.S. § 15A-903 in 2004 to allow a defendant to get full discovery in a case. The purpose of that amendment was that the legislature believed that if defendants got full discovery, it would greatly reduce the possibility that miscarriages of justice would occur. Similarly, a defendant cannot adequately defend himself against a charge if he does not know before trial the legal theory the state is using against him. The information requested by Defendant in this motion is consistent with the language, spirit and intent of the revised N.C. Gen. Stat. § 15A-903.

Despite the holding in State v. Garcia, 358 N.C. 382 (2004), the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment, as well as Article I, §§ 19, 23, 24, and 27 of the North Carolina Constitution, require the pre-trial disclosure of all elements of the crime, which the State intends to prove and to submit to the jury for a verdict. Jones v. United States,

526 U.S. 227 (1999). The Supreme Court applied Jones to the states in Apprendi v. New Jersey, 530 U.S. 466 (2000) and specifically applied it to capital cases in Ring v. Arizona, 536 U.S. 584 (2002).

Accordingly, the defendant requests an Order directing the State to disclose the felony or felonies it intends to submit to support a conviction for felony murder.

Respectfully submitted, this the 11th day of September, 2025.

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CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing by email and through file and serve to District Attorney Jason Smith (jason.w.smith@nccourts.org).

This the 11th day of September, 2025.

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