

Preservation  
ISSUE

NORTH CAROLINA  
GUILFORD COUNTY

FILED

1978 JAN 22 PM 1:56

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 97CRS-39580

GUILFORD COUNTY, C.S.C.

STATE OF NORTH CAROLINA

BY

*JSR*

VS.

RONNIE LEE KIMBLE,  
DEFENDANT.

MOTION TO DISMISS  
INDICTMENT FOR FAILURE  
TO ALLEGE ALL ESSENTIAL  
ELEMENTS OF FIRST  
DEGREE MURDER

NOW COMES the defendant, above-named, through counsel, and moves this court pursuant to N.C.G.S. 15A-954(a)(4) & (10); 15A-952(b)(6); 15A-924(a)(5) & (e); 15-144; the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States; and Article I, Sections 1, 19, 22, and 23 of the Constitution of North Carolina to dismiss the indictment charging the defendant with murder as it fails to allege all essential elements of first degree murder. As grounds for this motion, the defendant shows the court the following:

1. ~~VICTOR KENNETH HOLSTON~~ is charged with murder. The state seeks the death penalty.

2. The indictment for murder does not allege that the defendant acted with premeditation and deliberation or felony murder.

3. This indictment is fatally defective in that it fails to allege each essential element, namely premeditation and/or felony murder.

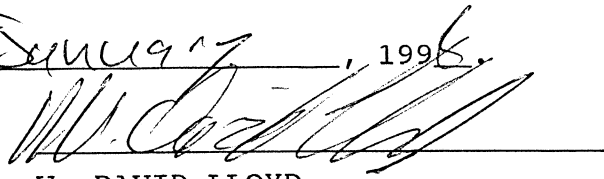
4. Our supreme court's decision in *State v. Duncan*, 282 N.C. 412, 193 S.E.2d 65 (1972), upholding the "short-form" murder indictment is in conflict with 15A-924(a)(5) requiring a plain and concise factual statement supporting every element and with *State v. Crabtree*, 286 N.C. 541, 212 S.E.2d 103 (1975).

5. It is also in conflict with *United States v. Keith*, 605 F.2d 462 (9th Cir. 1979) requiring indictment to set out every element of crime in indictment for manslaughter case-- language in indictment tracking language of statute fatally defective.

6. Such a defective indictment deprives the defendant of due process and equal protection under both State and Federal Constitutions in that it fails to present to the grand jury all the elements of the crime.

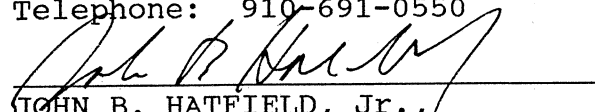
WHEREFORE, the defendant respectfully prays the dismiss the indictment.

This the 22 day of January, 1996.



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