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Its Days Were Numbered: The Year and a Day Rule Falls in North Carolina - State v. Vance

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NOTES

ITS DAYS WERE NUMBERED: THE YEAR AND A DAY RULE FALLS IN NORTH CAROLINA—State v. Vance

INTRODUCTION

[W]e conclude that the year and a day rule has become obso-lete, within the meaning of that term as used in N.C.G.S. § 4-1, and declare that the rule is no longer part of the common law of North Carolina for any purpose.¹

So stated the North Carolina Supreme Court in deciding to follow the national trend and abolish the year and a day rule (the rule).² For centuries, the rule has stood for the proposition that when death occurs more than one year and a day from the date of the injury, the cause of death will not be attributed to that injury.³

While enjoying almost universal application at one time, the rule has declined in popularity.⁴ Two significant factors which explain this decline are advances in modern medical science⁵ and modern criminal technology.⁶ However, not all states have chosen to abandon the rule and in those states it continues in full force.⁷ In addition, some states have chosen to retain the rule yet alleviate its harsh results by increasing the time span from one year to three

². Id.; WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., HORNBOOK ON CRIMINAL LAW § 3.12(i) (2d ed. 1986) [hereinafter LAFAVE].
⁴. LAFAVE, supra note 2 § 3/12(i).

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The decision in *State v. Vance* completed the partial abrogation of the rule that the court began in 1984 with their decision in *State v. Hefler*. In *Hefler*, the court stated that the year and a day rule did not apply to cases of involuntary manslaughter, thereby limiting its application. Finally, in *Vance*, the court declared that the rule no longer exists for any purpose in this state.

This Note has several objectives. It will describe the origins and early rationale for the rule, as well as trace its growth and later demise in North Carolina. In addition, it will analyze the court’s decision and the factors that led up to it. Finally, it will explore the ramifications of the court’s decision and determine if this was the proper course for the court to take.

**The Case**

On March 10, 1987, Alfred Ray Vance drank at least four beers with friends at a bar in Winston-Salem. Shortly before midnight, Vance proceeded to drive two of his friends home. While driving his second passenger home, Vance’s car crossed the yellow line and entered the other lane. His car collided with a car driven by the Bradleys, who were travelling in the opposite lane of traffic.

Alfred Vance survived the crash and was able to walk away from the scene of the accident. The other occupants of the vehi-
Vance's passenger, Bobby Caddell, was thrown from the vehicle and died immediately. Mrs. Bradley survived but died shortly afterwards. Mr. Bradley had a serious head injury and was given emergency treatment at the scene. He remained in a comatose or semicomatose state until his death on May 3, 1988.

Vance was charged with the second degree murder of Lanny Lee Bradley. The jury returned a verdict of guilty and the trial judge sentenced him to 20 years imprisonment. He appealed his conviction on the ground that the murder charge could not stand in light of the rule since Mr. Bradley had died 14 months after the accident. The court of appeals affirmed the trial court's decision without expressly nullifying the rule. The court stated that the evidence was sufficient to establish that the collision was the proximate cause of Mr. Bradley's death.

Vance petitioned the North Carolina Supreme Court for discretionary review, and review was granted, limited to the rule issue. The court determined that the rule no longer had a place in the common law of North Carolina and prospectively abrogated it. Justice Martin dissented, maintaining that the rule was never meant to apply to second degree murder cases.

17. Id.
18. Id.
19. Id.
20. Id.
21. Id. Lanny Lee Bradley's death resulted from respiratory failure and bacterial pneumonia. Both of these were related to the head injury suffered in the accident.
22. Id.
23. Id.
24. State v. Vance, 98 N.C. App. 105, 390 S.E.2d 165 (1990). On appeal defendant presented several other assignments of error. Among them were (1) denial of motions to dismiss, (2) error in jury instructions, and (3) error in the sentencing hearing.
25. Id.
26. Id. at 110, 390 S.E.2d at 168. The court stated the rationale for the rule - uncertainty where death occurs more than one year after the injury - but found that this uncertainty did not apply here. In effect, they avoided the rule by establishing a strong causal connection to rebut the presumption. The general view of the rule, however, is that it applies as an irrebuttable presumption.
28. Id. at 619, 403 S.E.2d at 499.
29. Id. at 624, 403 S.E.2d at 502.
BACKGROUND

A. Origin in England

The exact origin of the rule is unknown. The prevailing view is that it originated with the Statutes of Gloucester.\(^{30}\) This statute read as follows:

An Appeal of Murder . . . (4) It is provided also, that no Appeal shall be abated so soon as they have been heretofore; but if the appellant declare the Deed, the Year, the Day, the Hour, the Time of the King, and the Town where the Deed was done, and with what Weapon he was slain, the Appeal shall stand in Effect, (5) and shall not be abated for Default of fresh Suit, if the Party shall sue within the Year and the Day after the Deed done.\(^{31}\)

The rule appeared, more as we know it today, in 1644 in Sir Edward Coke’s *Institutes* where he discussed calculating the year and a day.\(^{32}\) Coke also explained the rationale for the rule, mainly, the uncertainty involved when death ensues so long after the injury.\(^{33}\) The evolution of the rule can be traced through the history of the common law in England.\(^{34}\)

Agreement on the origin of the rule in England is not completely settled. More important than its origins are the reasons cited for the creation of the rule.\(^{35}\) These reasons were the uncertainties of medical science and the inability to establish a causal

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\(^{30}\) Louisville, E. & St. Louis R. Co. v. Clarke, 152 U.S. 230, 240 (1894) (citing Statutes of Gloucester, 6 Edw. 1, ch. 9 (1278)); Vance, 328 N.C. at 617, 403 S.E.2d at 498.

\(^{31}\) Vance, 328 N.C. 613, 617, 403 S.E.2d 495, 498 (1991) (quoting Statutes of Gloucester, 6 Edw. 1, ch. 9 (1278)).

\(^{32}\) 3 Coke, *Institutes of the Laws of England*, ch. 7, p. 53 (1628). Coke stated that “for if he die after that time, it cannot be discerned, as the law presumes, whether he died of the stroke or poison . . . or of natural death; and in case of life the rule of law ought to be certain.” *Id.*

\(^{33}\) *Id.*

\(^{34}\) See, e.g. Louisville, E. & St. L.R. Co. v. Clarke, 152 U.S. 230 (1894) for the Supreme Court’s note tracing the history of the rule:


connection between the injury and death where death ensues more than one year and a day after the injury. Under this rationale, the rule took root in the United States.

B. Adoption in the United States

The adoption of the rule in the United States took place without exception and in various forms. The possible forms consisted of (1) as part of the state's common law, (2) as an element of the crime pursuant to a statutory directive, or (3) generally, pursuant to a "constitutional or statutory provision making common law applicable until repealed or overruled."

Not only did the form in which the rule was adopted differ among the states but the way the rule was viewed differed as well. Some saw it as clearly a rule of evidence, while others thought it

36. Id. at 391, 331 N.W.2d at 146. "The original rationale for the rule was probably tied to the inability of 13th Century medicine to prove the cause of death beyond a reasonable doubt after a prolonged period of time . . . ." Id.
37. See LAFAVE, supra note 2 § 3.12(i); 40 AM. JUR. 2d Homicide § 14 (1968).
38. 40 AM. JUR. 2d Homicide § 14 (1968); LAFAVE supra note 2 § 3.12(i); Annotation, Homicide as Affected by Time Elapsing Between Wound and Death, 20 A.L.R. 1006 (1922); Annotation, Homicide as Affected by Lapse of Time Between Injury and Death, 60 A.L.R.3d 1323 (1974).
39. Louisville, E. & St. Louis R. Co. v. Clarke, 152 U.S. 230 (1894). The Supreme Court recognized the rule as part of the common law of the nation.
40. People v. Carter, 168 Ill. App. 3d 237, 522 N.E.2d 653, appeal denied, 121 Ill. 2d 574, 526 N.E.2d 834 (1988). The Illinois statute specifically incorporated the rule into the definition of the crimes. It reads:
   "In order to make the killing either murder, manslaughter, or reckless homicide, it is requisite that the party die within a year and a day after the stroke received or the cause of death administered, in the computation of which the whole of the day on which the hurt was done shall be reckoned the first."
41. Annotation, Homicide as Affected by Lapse of Time Between Injury and Death, 60 A.L.R.3d 1323 (1974). The annotation cites both Georgia and Indiana as states that adopted the rule through one of these two methods.
42. Jones v. Dugger, 518 So. 2d 295 (Fla. Dist. Ct. App. 1987). Here the court stated that "It has been held that an indictment for murder which did not specifically allege the decedent died within a year and a day of the fatal injury was not fatally defective, but had to be attacked prior to judgment." The Court went on to add that "We agree with the analysis employed by the courts in Head and Ladd and find that the 'year and a day' rule is a rule of evidence rather than an element of the offense of murder." See id. at 298. See generally, Annotation, Homicide as Affected by Lapse of Time Between Injury and Death, 60 A.L.R.3d 1323 (1974).
to be substantive in nature. Still others saw it as being merely procedural, aside from its use as a rule of evidence.

C. Adoption in North Carolina

North Carolina enacted N.C. Gen. Stat. § 4-1, which declares that the common law is in full force in this state. North Carolina did not choose to make the rule an element of the offense of murder. However, through the enactment of N.C. Gen. Stat. § 4-1, the court was able to recognize the rule as part of North Carolina law. The rule was first recognized in State v. Orrell, an 1826 case, where the court stated the reason for the rule. It found that "[i]f death did not take place within a year and a day of the time of receiving the wound, the law draws the conclusion that it was not the cause of death; and neither the court nor jury can draw a contrary one." Subsequent cases continued North Carolina's adherence to the rule. In State v. Shephard, the court stated that "[i]n respect to murder, the time is material in one respect, and but in one, which is, that it must appear on the bill that the day of the death, as laid, is within a year and a day from that of the wounding."

44. Elliott v. Mills, 335 P.2d 1104 (Okla. Crim. 1959). The court found that, generally speaking, the rule had been treated as one of procedure and fell within their statute.
45. N.C. GEN. STAT. § 4-1 (1986). The statute reads:
All such parts of the common law as were heretofore in force and use within this State, or so much of the common law as is not destructive of, or repugnant to, or inconsistent with, the freedom and independence of this State and the form of government therein established, and which has not been otherwise provided for in whole or in part, not abrogated, repealed, or become obsolete, are hereby declared to be in full force within this State.
In Steelman v. City of New Bern, 279 N.C. 589, 592, 184 S.E.2d 239, 241 (1971), the court stated that this section in effect adopted the common law of England as it existed as of the signing of the Declaration of Independence.
46. N.C. GEN. STAT. § 14-17 (1986). This statute defines both first and second degree murder.
47. State v. Orrell, 12 N.C. (1 Dev.) 139 (1826); N.C. GEN. STAT. § 4-1 (1986).
48. Id. at 140.
49. Id. at 141.
50. See infra notes 51-57 and accompanying text.
51. State v. Shephard, 30 N.C. (8 Ired.) 195, 198 (1846). The court went on to say that "if it not be so laid, the indictment does not charge murder, as the law
State v. Haney, an 1872 case, dealt with a bill of indictment. The bill of indictment at issue did not specifically state that the death ensued within one year and a day from the date of the infliction of the wound. Despite this, the court held that the bill was sufficient because it did say that the victim did "languish, and then and there did die."

Other cases followed but they were few in number. The last cited case was in 1897 and the rule was not at issue again until State v. Hefier. Hefier was a 1984 case in which the court declined to extend the rule to involuntary manslaughter. The infrequent use of the rule may explain the court's delay in abrogating the rule.

ANALYSIS

Vance presented the court with what appears to be its first clear chance to abolish a doctrine that had outgrown its usefulness. The court seized the opportunity and effectively abrogated the rule for all intents and purposes in this state. In doing so, it joined the ranks of a growing number of states in recognizing that the rule no longer served a useful purpose in light of today's technological advancements. While not among the first to abrogate the rule, it should be noted that North Carolina's courts had not

attributes the death, not happening within a year and a day, to some other cause than the wounding." Id.

53. Id.
54. Id. at 469.
55. The remaining cases include: State v. Baker, 46 N.C. (1 Jones) 267 (1854); State v. Morgan, 85 N.C. 581 (1881); State v. Pate, 121 N.C. 659, 28 S.E. 354 (1897).
59. Id.
been confronted with this issue since 1897 and there had been no need to take action.\textsuperscript{61}

A. The Court's Decision

When the court granted defendant's petition for discretionary review, it limited its review to the issue of continued viability of the rule.\textsuperscript{62} In its opinion, the court expressed no reservations in deciding to abrogate the rule.\textsuperscript{63} The court took notice of the advances in medical science and crime detection and stated that "these advances have resulted in sophisticated medical tests, analyses, and diagnoses that allow positive evidence to be presented to a jury on questions of causation in criminal prosecutions."\textsuperscript{64} It went on to state that under any rationale suggested for the rule,\textsuperscript{65} the rule is anachronistic today.\textsuperscript{66}

The real dilemma for the court lay in whether the rule should be given prospective or retroactive application.\textsuperscript{67} Defendant argued that the rule should be abrogated prospectively only because "any change in the application of the rule would amount to an unconstitutional \textit{ex post facto} law,\textsuperscript{68} if applied to his case."\textsuperscript{69} The outcome of this decision would have a substantial impact on the defendant here. If the court gave the abrogation retroactive effect, the defendant's second degree murder conviction would be affirmed.\textsuperscript{70} Alternatively, if the court gave the rule prospective abrogation, defendant would be guilty of the lesser offense of involuntary manslaughter.\textsuperscript{71} The difference in severity of the sentencing for the

\textsuperscript{61} State v. Pate, 121 N.C. 659, 28 S.E. 354 (1897).
\textsuperscript{62} Vance, 328 N.C. at 616, 403 S.E.2d at 498.
\textsuperscript{63} Id. at 619, 403 S.E.2d at 499.
\textsuperscript{64} Id. (citing State v. Hefler, 310 N.C. 135, 140, 310 S.E.2d 310, 313 (1984)).
\textsuperscript{65} Here the court was referring to the uncertainty surrounding the purposes for the rule, the main contenders being (1) limitations on appeals of death by ancient law; and (2) limitations imposed by the status of medical science at the time of origin. Id.
\textsuperscript{66} Id.
\textsuperscript{67} Id. at 620, 403 S.E.2d at 500.
\textsuperscript{68} An \textit{ex post facto} law is defined as: "A law passed after the occurrence of a fact or commission of an act, which retrospectively changes the legal consequences or relations of such fact or deed . . . a law which aggravates a crime or makes it greater than when it was committed." \textsc{Black's Law Dictionary} 299 (5th ed. 1983).
\textsuperscript{69} State v. Vance, 328 N.C. 613, 620, 403 S.E.2d, 495, 500 (1991).
\textsuperscript{70} Id. at 622, 403 S.E.2d at 501.
\textsuperscript{71} Id. at 623, 403 S.E.2d at 502.
two crimes is substantial.\textsuperscript{72}

The court found that both the federal and state constitutions forbade enactment of \textit{ex post facto} laws, but that this prohibition seemed designed more for legislative action than judicial modification.\textsuperscript{73} However, the court went on to add that "the Supreme Court of the United States has held that the fifth and fourteenth amendments to the Constitution of the United States also forbid retroactive application of an unforeseeable judicial modification of criminal law, to the disadvantage of the defendant."\textsuperscript{74}

In deciding whether to abrogate the rule prospectively or retroactively, the court took into account the manner in which other jurisdictions have dealt with this issue.\textsuperscript{75} It noted that only one of the jurisdictions dealing with the issue since 1960 had abrogated the rule retroactively.\textsuperscript{76} Ultimately, the court concluded that the rule should be abrogated prospectively.\textsuperscript{77}

Prospective abrogation clearly favored the defendant.\textsuperscript{78} It meant that the rule was still in effect at the time defendant's vehicle struck the Bradley's.\textsuperscript{79} This dictated that the rule apply as an absolute bar to a conviction of second degree murder.\textsuperscript{80} Due to the court's decision in \textit{Hefler}, in 1984, defendant was unable to argue the year and a day rule as a bar to a conviction on the lesser offense of involuntary manslaughter.\textsuperscript{81} Accordingly, the court remanded with instructions to enter a judgment against the defendant.

\begin{footnotes}
\item 72. Second degree murder is a Class C Felony and carries a penalty of up to 50 years or life imprisonment. N.C. GEN. STAT. §§ 14-17, 14-1.1 (1986). Involuntary Manslaughter is a Class H Felony and carries a penalty of up to 10 years imprisonment. N.C. GEN. STAT. §§ 14-18, 14-1.1 (1986).
\item 73. Vance, 328 N.C. at 620, 403 S.E.2d at 500.
\item 74. Id. (citing Marks v. United States, 430 U.S. 188 (1977); Bouie v. City of Columbia, 378 U.S. 347 (1964)).
\item 75. Id. at 619-20, 403 S.E.2d at 499-500.
\item 76. Id. at 621, 403 S.E.2d at 500. That jurisdiction is Pennsylvania which gave the rule retroactive abrogation in Commonwealth v. Ladd, 402 Pa. 164, 166 A.2d 501 (1960).
\item 77. Vance, 328 N.C. at 621, 403 S.E.2d at 500.
\item 78. Id. at 623, 403 S.E.2d at 501.
\item 79. Id.
\item 80. Id. at 623, 403 S.E.2d at 501-02. The court emphasized that retroactive abrogation would have resulted in a conviction upon "less evidence than would have been required to convict him of that crime at the time the victim died and would, for that reason, violate the principles preventing the application of \textit{ex post facto} laws." Id. at 622, 403 S.E.2d at 501.
\item 81. Id. (citing State v. Hefler, 310 N.C. 135, 310 S.E.2d 310 (1984)).
\end{footnotes}
B. Comparison to the National Treatment of the Rule

North Carolina’s decision in Vance was definitely in step with the national trend. The only variant was perhaps the method of abrogation. In Vance, the court abrogated the rule through judicial action. The generally accepted method of abrogation is pursuant to legislative action.

Several options exist when abrogation is being considered. When legislative abrogation is the focus, the options include (1) extend the time frame involved; (2) change the rule to a rebuttable, rather than irrebuttable presumption; and (3) abolish the rule entirely. When the focus is on judicial abrogation, the choices are essentially the same. However, the legislature has the ultimate authority.

The rule is a creature of the judiciary and a rule housed within the common law. It is clear that the courts possess the authority to abrogate the rule along with the legislature. In N.C. GEN. STAT. § 4-1, North Carolina codified the common law. Since the rule

82. Id. at 623, 403 S.E.2d at 502. The court was able to do so because the trial court had included among the possible verdicts second degree murder, involuntary manslaughter, and not guilty. As a result, if the jury was able to conclude that defendant was guilty of second degree murder, they clearly had enough evidence to convince them of his guilt for involuntary manslaughter.

83. See supra notes 1 and 60 and accompanying text.


86. Jones v. Dugger, 518 So. 2d 295, 297 (Fla. Dist. Ct. App. 1987). “Historically, the more common viewpoint seems to be that abrogation of the rule must be accomplished, if at all, by the legislative branch.” Id.; Minster, 302 Md. 240, 486 A.2d 1197; State v. Young, 77 N.J. 245, 258, 390 A.2d 556, 562 (1978) (Schreiber, J., concurring) “I am unable to perceive any compelling reason why this Court should not await final legislative action. The courts in most jurisdictions that have considered this question have deferred to their respective legislatures.” Id.; People v. Bregnard, 265 N.Y. 100, 191 N.E. 850 (1934).

87. Minster, 302 Md. 240, 486 A.2d 1197.

88. Id. at 245, 486 A.2d at 1199 (quoting People v. Stevenson, 416 Mich. 383, 393, 331 N.W.2d 143, 146-47 n.4 (1982)).


90. Id at 394, 331 N.W.2d at 147.

91. Id.

92. Id.

93. N.C. GEN. STAT. § 4-1 (1986).
was brought into the state pursuant to this method, it was wholly within the province of the court to judicially abolish it. Accordingly, the court acted properly in abrogating the rule.

C. Ramifications of the Decision

Advancements in medical science and crime detection eliminate any justification for continuance of such an archaic rule. These advances eliminate the difficulty in establishing the requisite causal connection. Despite this, several jurisdictions continue to adhere to the rule.

In jurisdictions following the rule, it is inevitable that the harsh results mentioned above will continue. Even as far back as 1876, courts recognized the absurdity of the rule. In State v. Huff, the Nevada court stated that “the law is guilty of the absurdity that a malicious killing shall be deemed a harmless or a guilty act according to the length of time the victim survives after receiving the fatal wound.”

A new twist to the rule is the AIDS epidemic. Increasingly, courts will be faced with cases involving intentional infliction of the AIDS virus as a species of murder or manslaughter. In a jurisdiction which follows the rule, a conviction will be virtually impossible simply because the time between the infliction (injury) and the death will never be within a year and a day. There has been one such case. In that case, the defendant, who was infected with the virus, was convicted of three counts of attempted murder. A judge overturned the conviction, finding that the death could not have resulted within a year and a day.

94. Id. In fact, this is apparent on the face of the statute.
96. See LAFAVE, supra note 2 § 3.12(i).
97. Id.
98. See supra notes 7 and 8 and accompanying text.
100. Id. The court went on to explain that while this seems to be the case, it was a rule of evidence only. As such, it merely meant that we can no longer conclude you killed him.
102. Id. at 835.
103. Id.
CONCLUSION

The rule is an anachronism. Possibly a just rule at one time, the rationale behind its creation has no merit today. Murder is murder whether the victim dies 1 day or 500 days from the date of the injury. To conclude that Lanny Lee Bradley did not die as a result of Vance’s actions defies logic. North Carolina recognized this and abrogated the rule.

The time has come for the remaining jurisdictions to put to rest this antiquated rule. If indeed the rule began in 1278, 713 years have passed since its inception. These years have been full of growth and change. This growth has made any application of the rule an illogical reflex action. The inevitable conclusion is that other jurisdictions will soon join North Carolina and the growing number of states which have laid this old rule to rest.

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