# IF THE WAGES OF SIN ARE FOR DEATH: THE SEMANTICS AND PRAGMATICS OF A STATUTORY AMBIGUITY

RONALD R. BUTTERS
*Duke University*

OTTO JONES AND ERIK SMITH SOLD COCAINE and other drugs in the woods at the edge of a North Carolina town to men and women in automobiles. One night Kevan Hansen made a purchase from Smith; as Hansen was driving away, Smith noticed that Hansen had significantly short-changed him in an apparently deceitful manner. Smith told Jones that he had just received "short money," whereupon Jones fired his gun at Hansen's fleeing car, wounding Hansen. Hansen drove on for several miles and then died at the wheel.[1]

The district attorney charged Jones with the capital crime of homicide "for pecuniary gain." That is, if the homicide could properly be viewed as having been "committed for pecuniary gain," then that motive could be considered an AGGRAVATING CIRCUMSTANCE in the penalty hearing which in North Carolina follows conviction of first-degree murder in cases where the death penalty is an option. Each aggravating circumstance (weighed against any mitigating circumstances) increases the likelihood that the convicted felon will receive the death sentence rather than life in prison.

To the layman, the district attorney's invoking of the "pecuniary gain" factor may well seem linguistically frivolous. Jones's attorneys, however, were forced to treat this question seriously indeed: Does the language of the North Carolina capital punishment statute with respect to felonies "committed for pecuniary gain" properly apply in this case? Assuming that these events took place as alleged, was Jones in the eyes of the law acting "for pecuniary gain" although he sold nothing himself and, arguably, did not profit from the transaction?

My conclusion, based upon the methodology of both linguistics and literary study, is that the phrase *capital felony committed for pecuniary gain* would be improperly applied in the case at hand. I offered three kinds of arguments to Jones's attorneys: (1) arguments based upon the language of the court decisions which I have examined (what literary scholars call THE EXEGETICAL TRADITION), (2) arguments based upon apparent legislative intent with respect to the phrase *capital felony committed for pecuniary gain* (what linguists and literary scholars term AUTHORIAL INTENT), and (3)

arguments based upon semantic analysis of the ordinary-language meaning of the phrase *capital felony committed for pecuniary gain.*

## 1. The Exegetical Tradition: The Language of the Court Decisions

The methodology of literary and linguistic scholars in many ways parallels the lawyers' procedure: to find the meaning of a term within a particular discourse community, one looks at the discourse in which the term appears and, examining the particular contexts in which the term is used (as well as any explicit definitions which the discourse community members supply), one inductively reconstructs the definition which the community members themselves are operating under. My analysis of the exegetical tradition of the semantic interpretation of the phrase (*capital felony*) *committed for pecuniary gain* is based upon the rulings of the North Carolina Supreme Court in 15 capital-crime cases and two noncapital cases;[2] a ruling by the North Carolina Court of Appeals in one noncapital case (*State of North Carolina v. David Eric Morris* [1982]); and portions of two North Carolina statutes (and the legislative history of each). The statutes are as follows:

> G.S. 15A-1320.4, which is entitled, "Presumptive punishment for felony other than Class A or Class B felony; prior felony convictions; consideration of aggravating and mitigating factors; written findings." Section (1)(c) currently lists, as an aggravating factor, "the defendant was hired or paid to commit the offense." This passage was changed in 1983, when the legislature substituted the current language for the former sentence, "the offense was committed for pecuniary gain."
>
> G.S. 15A-2000, (e)(5): "The capital felony was committed while the defendant was engaged, or was an aider or abettor, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any homicide, robbery, rape or sex offense, arson, burglary, kidnapping, or aircraft piracy or the unlawful throwing, placing, or discharging of a destructive device or bomb."
>
> G.S. 15A-2000, (e)(6): "The capital felony was committed for pecuniary gain."

In the court cases which I examined, the phrase *committed for pecuniary gain* was applied 16 times in cases involving armed robbery and twice in cases of murder for hire. The phrase was applied to no other types of crimes in the judicial record which I have examined, though it is clear that it would apply also to cases of murder for inheritance (see §3.3 below).

The explicit language of the North Carolina Supreme Court usually presupposes the validity of application of the phrase *capital felony committed for pecuniary gain* in both types of cases. See, for example, *State of North Carolina v. Henry Lee Hunt and Elwell Barnes* (1988, 410):

> The trial court did not err when sentencing defendant Barnes for murder by submitting the aggravating factor that the murder was committed for pecuniary

gain where there was evidence that . . . defendant Barnes . . . and Hunt had killed Ransom . . . for $2,000.

Such application to a murder-for-hire case is, in fact, strictly in conformity with ordinary-language interpretations of the phrase in question (see below, §3). Similarly, see *State of North Carolina v. John Wesley Oliver and George Moore, Jr.* (hereafter *Oliver II*; 1983, 309): "Double jeopardy does not preclude the submission of pecuniary gain as an aggravating factor when the underlying felony is armed robbery." Though such a "submission" seems to be at the very borderline of ordinary-language interpretations of the phrase *for pecuniary gain* (again, see §3 below), the fact that the Court has so used it in at least 16 cases—absent any future decision to the contrary—tends strongly to establish the legitimacy of the conclusion that a murder committed in the course of some armed robberies is, legally, a *capital felony committed* FOR PECUNIARY GAIN. This somewhat surprising judicial precedent may in part be owing to the fact that, as the Court comments in another case, "The legislature has attached special significance to murder committed in the course of commission of robbery and other felonies" (*State of North Carolina v. Buck Junior Goodman* [1979], 43; see below, §3.3, for the ordinary language implications of Judge Exum's ruling).[3] Moreover, in *State of North Carolina v. John Sterling Gardner, Jr.* (1984, 513), the Court speaks as follows: "In *State v. Oliver,* 302 N.C. 28, 274 S.E. 2d 183 (1981), we interpreted G.S. 15A-2000(e)(6) to permit submission of the pecuniary gain factor"; this case, often referred to as *Oliver I,* was a robbery in which two victims, Watts and Hodge, were killed. *Oliver I* is also referred to in a relevant way in *Oliver II* (351): "As Justice Exum stated in *Oliver I,* 'the hope of pecuniary gain provided the impetus for the murder of both Watts and Hodge.' 302 N.C. at 62, 274 S.E. 2d at 204. Defendants advance no reason for this Court to abandon its prior rulings on this issue."[4] Obviously, therefore, the fact that the clear and present "hope of pecuniary gain provided the *impetus* for the murder" in *Oliver* (and other like cases in which robbery victims were murdered) forms the Court's basis for allowing the pecuniary gain circumstance to be considered in the sentencing phase of such trials. However, it is significant that Judge Exum's ruling in *Oliver I* is based on the particular circumstances of that particular case, in which "the hope of pecuniary gain . . . and the murders were inextricably intertwined":

The murder of Hodge was apparently committed in an effort to eliminate a witness to the robbery; and the murder of Watts, in the hope that defendants could successfully escape, avoid prosecution, and enjoy the fruits of their sordid endeavor. The evidence is such that the jury could find that both murders were committed for the purposes of permitting defendants to enjoy pecuniary gain. [62]

Such "inextricable intertwining" is not to be found in the case before us. Moreover, even given the circumstances of *Oliver I*, Judge Exum implicitly recognizes the general validity of the arguments AGAINST the general application of the *pecuniary gain* circumstance to ALL cases of robbery/murder: "the argument is plausible, [but] we reject it [in the particular case of *Oliver I* ]" (62). Clearly, other robbery/murder cases might be found without "inevitable intertwining"; in such cases, the "plausible" argument must prevail.

With respect to the possible extension of the *pecuniary gain* circumstance to any other types of crime, the court is all but silent. In *Oliver II* we do find the following (351):

> Nor do we find that G.S. §15A-2000(e)(6) is unconstitutionally vague. While the vagueness of this [statute with respect to the pecuninary gain] factor has not been specifically ruled on, this Court has repeatedly rejected broadside assertions that all the aggravating factors in G.S. §15A-2000(e) are vague and overlapping. See *State v. Rook*, 304 N.C. 201, 283 S.E. 2d 732; *State v. Barfield*, 298 N.C. 306, 259 S.E. 2d 510; *State v. Goodman*, 298 N.C. 1, 257 S.E. 2d 569 [1979].

In other words, while G.S. §15A-2000(e)(6) may not be UNCONSTITUTIONALLY vague, there is little doubt that legitimate questions as to its precise meaning do remain. In the case at hand—the killing of Hansen by Jones—the question becomes, in Judge Exum's words, whether Jones's "HOPE OF PECUNIARY GAIN PROVIDED THE *IMPETUS* FOR THE MURDER." In cases of ordinary armed robbery, the "hope of pecuniary gain" is usually quite evident, and, where not evident, it is usually easy to discern that it is NOT a motivation.[5] In the Jones case, however, it is not at all clear that pecuniary gain was "THE impetus" for the shooting, since a host of other motivations appear to have been paramount (see §3.2 below).

Thus, following Judge Exum's rule—which goes somewhat beyond the ordinary language interpretation of G.S. §15A-2000(e)(6) as outlined in §3 below—it would appear that the Court would be highly unlikely to permit the extension of the pecuniary gain circumstance to a case of the sort at hand. In addition, the general reluctance of all courts to violate ordinary language construals, the Supreme Court's acknowledgment that G.S. §15A-2000(e)(6) might be construed as somewhat vague, and the de facto limitation of precedent to the use of G.S. §15A-2000(e)(6) only for homicides connected with robbery and murder for hire, all further indicate that "hope of pecuniary gain" is not an appropriate aggravating circumstance, within the community of discourse of the North Carolina courts, for a case such as the one at hand.[6]

### 2. Authorial/Legislative Intent

The list of "especially significant" types of crime in G.S. §15A-2000(e)(5) does not contain anything that has to do with illegal drug sales. So, if we are to follow the Court's logic in inferring special legislative status for cases of robbery/murder, our conclusion must be that the Court specifically meant to EXCLUDE any such special status for drug deal/murder. In 1983, the legislature attempted to clarify G.S §15A-1340.4 by removing the words "the offense was committed for pecuniary gain" and substituting "the defendant was hired or paid to commit the offense." The Court has ruled that this amendment of G.S §15A-1340.4 does not affect the denotative meaning of G.S. §15A-2000(e)(6) (see *State v. Gardner*, 1984, 491, 513); presumably, if the legislature had intended to change the meaning of G.S. §15A-2000(e)(6) they would have amended it, too. Nonetheless, the fact that the legislature made such a clarification at all indicates that their minds were in general inclined towards narrowing the definition of *pecuniary gain*, not towards broadening it.

Beyond this, however, there seems to be little to say about the intent of the legislature. What evidence there is points in the direction of severe legislative limitations upon application, indicating that the legislature intended to exclude the pecuniary-gain aggravating circumstance from cases such as the one under consideration here. Moreover, in the absence of any further clarification, legal principle requires that we interpret G.S. §15A-2000(e)(6) according to the ORDINARY LANGUAGE meaning of the statute: *The capital felony was committed for pecuniary gain.*

### 3. Linguistic Analysis: Ordinary Language Meaning

> Nobody does nothing for nobody for nought.
> —Peter Lord, quoted in *Barnes and Noble Book of Quotations*, ed. Robert I. Fitzhenry (1987, 247)

The ordinary language interpretation of G.S. §15A-2000(e)(6) requires at least three conditions on the phrase *for pecuniary gain*. First, *gain* must be reasonably certain. Second, *gain* must be significantly intended. Third, *gain* must be directly related to the "capital felony."

3.1. The requirement of *REASONABLE CERTAINTY*. Consider the following sentences:

a. Sam welds car bodies for pecuniary gain.
b. Sam plays poker for pecuniary gain.
c. Sam writes sonnets for pecuniary gain.
d. Sam buys lottery tickets for pecuniary gain.
e. Sam pays taxes for pecuniary gain.

The increasing oddity of these sentences is owing chiefly to one factor: the increasing UNLIKELIHOOD that the activity described in the verb phrase (hereafter VP; e.g., *welds car bodies, plays poker,* etc.) could reasonably result in the noun phrase (hereafter NP) that immediately follows the preposition *for* (i.e., in this case, *pecuniary gain*). Indeed, the extremely contradictory (and hence very puzzling) nature of sentence (e) is owing entirely to the total unlikelihood that pecuniary gain could result from paying taxes. However, if we alter either the VP or the NP to increase likelihood, the puzzling nature disappears:

e'. Sam pays taxes for peace of mind.
e". Sam cheats on his taxes for pecuniary gain.

Now, in the case at hand, when Jones fires a gun at a fleeing person who has just cheated one of his colleagues in a business deal (just how heinous and despicable that business deal may be is totally irrelevant), the likelihood of pecuniary gain resulting is tenuous to the point of severe uncertainty. For that matter, the likelihood that the person fired upon had a significant amount of money is not at all great. At best, Jones might expect to recover property which his lieutenant had been cheated out of—thus PREVENTING LOSS, but not ACHIEVING GAIN. If I go to your house and take back the lawn mower which you have borrowed from me and neglected to return, I have not received pecuniary gain, I have merely restored or remedied a pecuniary loss.

In short, because Jones's shooting at Hansen has little if any certainty of leading to pecuniary gain for Jones, the semantic requirement of REASONABLE CERTAINTY is not met, and I therefore conclude that, because of the REASONABLE CERTAINTY criterion in ordinary language interpretation, G.S. §15A-2000(E)(6) does not apply in this particular case.

3.2. THE REQUIREMENT OF *SIGNIFICANT INTENT.* It is important to point out that this requirement of INTENT was highlighted by the Supreme Court itself, writing in *State v. Gardner* (1984, 513): "We interpreted G.S. 15A-2000(e)(6) to permit submission of the pecuniary gain factor when the killing was FOR THE PURPOSE OF getting money or something of value" (emphasis mine). Note that the Court does NOT say, "when [ANY OF THE PURPOSES OF] the killing was for . . . getting money or something of value"; NOR does the Court say "when [ONE OF THE PURPOSES OF] the killing was for . . . getting money or something of value." Rather, the Court speaks of "THE purpose of getting money or something of value." Thus the Court indicates that the intent for pecuniary gain must be SIGNIFICANT—primary, and exclusive.

The Court's explicit linking of intent to the phrase *for pecuniary gain* is precisely the ordinary language meaning of the *for* construction. Consider the following sentences:

f. Sam gets married for pecuniary gain.
g. Sam resembles Martin for pecuniary gain.
h. Sam is six feet tall for pecuniary gain.
i. Sam has a high I.Q. for pecuniary gain.
j. Sam attends church every Sunday for pecuniary gain.
k. Sam goes trout fishing for pecuniary gain.

All of these sentences are odd precisely because of the question of INTENT. Sentence (f) is the least odd—we can at least imagine circumstances in which someone could have the intent of pecuniary gain as the outcome of getting married (however socially unacceptable such a purpose might be deemed). The anomalousness of (g), (h), and (i), however, stems exactly from the fact that the activity described by the VP (*resembles Martin, is six feet tall, has a high I.Q.*) is activity over which one has no control; thus the requirement of intent implicit in the *for* construction is contradicted by the activity itself. Sentences (j) and (k) are anomalous because, while intent is possible, it is so secondary that the sentences are odd even though one can force sense into them. For example, upon reflection we might hypothesize that Sam expects that his regular church attendance will be blessed by the Lord with pecuniary reward; however, such a hypothesis is linguistically valid only because we have thought up a clever way to impose upon Sam's mental processes the INTENT "for pecuniary gain." Similarly, Sam might hope that his trout fishing will lead to the catching of fish for which he will win a monetary prize, or which will enhance his stature and virile reputation in the community, which in turn may bring him customers for his insurance business; again, however, to say that Sam fishes "FOR pecuniary gain" runs counter to the semantic rules of the English language: any intent of pecuniary gain is too opaque and feeble a part of Sam's motivation to make (j) and (k) proper utterances from the point of view of the semantics of ordinary language.

But what PURPOSE or INTENT can be ascribed to the shooting in the case at hand? Admittedly, one could speculate that perhaps Jones fired at Hansen to punish the person who had cheated his lieutenant, or merely to frighten the cheater. Insofar as such warnings might be hoped to send a message to future potential cheats, one might therefore infer that a motive related to pecuniary gain lay somewhere in the back of the shooter's mind and provided an impetus, however indirect and partial, for the shooting that led to the death of Hansen. Or possibly the shooter's motive was to recover

the property which Hansen had deviously purchased—RECOVERY, however, is not the same thing as GAIN (see the discussion of this point at the end of §3.1 above). But more plausible motives arise in this case as well. One could reasonably infer that a primary motive for Jones's firing at Hansen was passion—that the INTENT or PURPOSE was to give vent to his rage at the cheating of his colleague. Shooting at a customer who has just cheated one is not the same thing as trout fishing, but it likewise is not the same thing as robbery, either.

At best the question of intent or purpose is vague and obscure in the case at hand, and any intent of pecuniary gain is diluted and subsidiary: because Jones's shooting at Hansen has no clear and unequivocal motive of pecuniary gain for Jones, the semantic requirement of INTENT OR PURPOSE is not clearly met, and I therefore conclude, based on the ordinary-language requirement of SIGNIFICANT INTENT, that G.S. §15A-2000(e)(6) does not apply in this particular case.

3.3. THE REQUIREMENT OF *DIRECT RELATIONSHIP* BETWEEN "GAIN" AND THE "CAPITAL FELONY." From the point of view of ordinary-language interpretation, there are at least two types of cases to which G.S. §15A-2000(e)(6) clearly and unequivocally applies: murder for hire and murder for inheritance. With respect to murder for hire, the Supreme Court (quite properly) has simply taken for granted the relevance of the statute, ruling only on the sufficiency of the evidence to indicate that murder for hire has taken place (*State v. Hart and Barnes,* 1988, 410, 432; *State v. McLaughlin,* 1988, 73, 98). In effect, the Court found that a contract had been arrived at in both cases, contracts which implicitly satisfied the ordinary-language requirements of REASONABLE CERTAINTY (§3.1) and SIGNIFICANT INTENT (§3.2). In addition, these "contracts" satisfy a third ordinary-language requirement, that of DIRECT RELATIONSHIP between the crime and the pecuniary gain. Although cases of murder for inheritance did not arise in the documents which I have looked at, it is easy for a native speaker of American English to see how G.S. §15A-2000(e)(6) would apply to such cases as well: If A. Smith murders Z. Smith, and if A. Smith is a beneficiary of Z. Smith's estate, there is no doubt that (assuming that the requirements of §3.1 and §3.2 have been met) this homicide would constitute a case of murder for pecuniary gain.

The reason that murder for hire and murder for inheritance so obviously fall under the application of G.S. §15A-2000(e)(6) is this: the relationship between the crime and the gain is absolutely direct. To the extent that the relationship is less direct in other crimes—even robbery—to that extent the ordinary language application is less clear. To see how this is so, consider the following hypothetical circumstance.

Suppose that John, a twelve-year-old boy, has a paper route; he delivers newspapers for pecuniary gain. Suppose further that, in the course of making his deliveries, John deliberately throws a paper in such a way as to knock down a flowerpot from the porch railing of Mrs. Green, a customer he particularly dislikes. Would sentence (m) be a semantically well-formed utterance for describing this situation?

m. John knocked down the flowerpot for pecuniary gain.

Native speakers in fact do not find (m) appropriate to the case of the knocked-down flowerpot. Let us examine why native speakers react this way.

Note that sentence (m) meets both the "reasonable certainty" requirement and the "significant intent" requirement: John intends pecuniary gain in delivering the newspaper, and John is reasonably certain of pecuniary gain from delivering the newspaper. The problem is that, in ordinary language, the connection between the pecuniary gain and the action which resulted in the destruction of the flowerpot is too remote; normal semantic interpretation does not allow us to view (m) as a justifiable statement about the hypothetical situation just described concerning John and his newspaper delivery.[7] At best, (m) seems a philosopher's (or a lawyer's) trick.

Similarly, there is something of a linguistic problem in construing felony homicides as actions being carried out—strictly speaking—FOR pecuniary gain: the ROBBERY is done for pecuniary gain, but the KILLING is merely a part of the process—neither necessary or sufficient. That is to say, a sentence such as the following would normally not apply to a murder which took place incident upon a robbery because the relationship between "gain" and the "capital felony" is too indirect (i.e., pecuniary gain is not the GOAL of the killing of Hansen):

n. Jones killed Hansen for pecuniary gain.

A special inference, however, has been drawn by Judge Exum in *Oliver I* (302 N.C. at 62, 274 S.E. 2d at 204, quoted in *Oliver and Moore* 1983, 351): "the hope of pecuniary gain provided the impetus for the murder of both Watts and Hodge," two persons killed in the course of a robbery attempt (see §1 above). It is not my place to argue with the legal validity of Judge Exum's inference in the case of felony robbery. Indeed, as pointed out above, Judge Exum's rule was actually drawn quite narrowly for the specific circumstances of *Oliver I*, with some implication that it cannot be extended to dissimilar cases of robbery/murder. The Court also comments as follows in another case: "The legislature has attached special significance—in G.S. §15A-2000(e)(5)—to murder committed in the course of commission of

robbery and other felonies" (*State of North Carolina v. Buck Junior Goodman* [1979], 43); in other words, Judge Exum's extension of the pecuniary-gain circumstance to felony murder has special justification in view of the legislature's treatment of robbery as a special circumstance with respect to homicide. However, to cases of homicide in connection with the sale of narcotics, the legislature attaches no such special significance in G.S. §15A-2000(e)(5). In addition, Judge Exum's ruling (as noted above in §1) is based on the particular circumstances of the particular case before him, in which case "the hope of pecuniary gain . . . and the murders were inextricably intertwined." Such "inextricable intertwining" is not to be found in the case before us. Finally, even given the circumstances of *Oliver I,* Judge Exum implicitly recognizes the general validity of the arguments against the promiscuous application of the *pecuniary gain* circumstance to all cases of robbery/murder: "While the argument is plausible, we reject it" in the particular case of *Oliver I.*

But these compelling legal issues aside, I here wish simply to argue that, though it may in itself be legally justified, Judge Exum's ruling (concerning felony robberies in which the expectation of pecuniary gain is "inextricably intertwined" with the homicide) stands at the very border of the possible inferences that ordinary language allows for such a sentence. In the absence of any special circumstance for further straining the ordinary-language interpretation of the phrase *for pecuniary gain* with respect to the condition of DIRECT CONNECTION between the action and the pecuniary gain, I conclude that it would be in error on this count to extend the application of G.S. §15A-2000(e)(6) to a case such as that of Jones's killing of Hansen—a case in which the connection between the shooting and any hope of pecuniary gain is more oblique than ordinary language interpretation would allow.

## 4. CONCLUSION

If the individual arguments above are in themselves each persuasive, the cumulative effect must indicate that the application of G.S. §15A-2000(e)(6) to this particular case would be inappropriate and unjust.

If the courts permitted the extension of G.S. §15A-2000(e)(6) to cases such as this one, a legitimate question would be opened concerning the effective limits of the domain of such an extension. Suppose, for example, that Green, a prostitute, kills Blue, a client, when Blue refuses to pay Green for illegal services rendered. Would this be a capital crime committed for pecuniary gain? Or suppose that Green kills Blue during a poker game—illegal gambling under North Carolina law—for cheating at cards. Would

this be a matter of a capital crime committed for pecuniary gain? Or suppose that Green kills Blue in a tavern argument over who is supposed to buy the next beer. Wouldn't this also have to be treated as a capital crime committed for pecuniary gain—if the current case were to be so construed? Opening up G.S. §15A-2000(e)(6) for application beyond the sorts of cases clearly called for by ordinary-language application and/or cases clearly established in case law would have the inevitable effect of opening up a whole Pandora's box of crimes to which zealous prosecutors might wish to attach it—cases which the courts would then have the difficult task of finding a way to stop. In short, in addition to all of the linguistic arguments that I have voiced in this essay, it seems to me that there is a practical one as well: here is a dike that needs to have a finger thrust into it.

## NOTES

1. The substance of this article (an earlier version of which was read at the Law and Society Association meeting in Philadelphia, May, 1992) is drawn from a report which I prepared for Jones's attorneys. Although the case—and my report—are a matter of public record, I have used fictitious names in the preparation of this essay.

Those interested in legal outcomes will want to know that the trial judge in this case agreed with the arguments which the defense put forth: the case was not tried as a capital crime. Jones was convicted of murder and sentenced to life in prison.

2. Cases involving armed robbery: *State of North Carolina v. Buck Junior Goodman* (1979); *State of North Carolina v. George E. Elkerson* (1982); *State of North Carolina v. Ameen Kareem Abdullah* (1983) (not a capital case); *State of North Carolina v. Henry Louis Jackson* (1983); *State of North Carolina v. Bruce Franklin Jerrett* (1983); *State of North Carolina v. Hayes et al.* (1983) (not a capital case); *State of North Carolina v. John Wesley Oliver and George Moore, Jr.* (1981, 1983); *State of North Carolina v. John Sterling Gardner, Jr.* (1984); *State of North Carolina v. Phillip Lee Young* (1985); *State of North Carolina v. Larry Darnell Williams* (1986); *State of North Carolina v. Michael Ray Quesinberry* (1987 & 1989); *State of North Carolina v. Henry Lee Hunt and Elwell Barnes* (1988); *State of North Carolina v. Jon Lee Benson* (1988); *State of North Carolina v. John Francis Hogan, III* (1988); *State of North Carolina v. Eugene Davis, Jr.* (1989).

Cases involving murder-for-hire: *State of North Carolina v. Henry Lee Hunt and Elwell Barnes* (1988); *State of North Carolina v. Elton Ozell McLaughlin* (1988).

3. The Court is here apparently alluding to G.S. 15A-2000, (e)(5). Although the Court has ruled that robbery cannot be introduced as an aggravating circumstance in the penalty phase of a felony murder trial—because to do so would generally place the defendant in double jeopardy—the Court nonetheless ruled in *Goodman* that it is not improper to MENTION the fact that the murder took place in the course of a robbery: "the jury may consider the underlying robbery or other felony in the sentencing phase. What our holding here prohibits is simply that the underlying felony cannot be submitted to the jury as an *aggravating circumstance.* . . . [This is because] it would be patently unfair for a defendant convicted of first

degree murder by virtue of the felony-murder rule to start with one aggravating circumstance against him while a defendant convicted on the basis of premeditation and deliberation would start with no aggravating circumstances against him."

4. The Court also cites (in the same place) two other cases in which it "has reiterated its position" with respect to double jeopardy and the pecuniary gain factor: *State v. Taylor,* 304 N.C. 249, S.E. 2d 761 (1981), and *State v. Irwin,* 304 N.C. 93, 282 S.E. 2d 439 (1981). I have not examined these decisions first hand.

5. Indeed, the Court of Appeals argues in another place that it is precisely the separability of the expectation of *pecuniary gain* from robbery that allows *pecuniary gain* to be admissible at all as an aggravating circumstance in felony homicides; see *State of North Carolina v. David Eric Morris* (1982, 161–62): "If the pecuniary gain at issue in a case is inherent in the offense, then that 'pecuniary gain' should not be considered an aggravating factor. (We note that pecuniary incentive is not always inherent in the crime.) Thus, the determination whether pecuniary gain, as an aggravating factor, is also an element of the underlying offense, is a factual one. For example, if A hires or pays B to disarm C with the threatened use of a firearm and to throw C's weapon in the river, B could be convicted of robbery with a firearm, and B's sentence would be enhanced by the aggravating fact that the offense was committed for hire or pecuniary gain." However, I assume, the point is that if A robs C of his firearm simply because he wants to disarm him and throw the weapon in the river, then pecuniary gain is not an issue, and could not be considered an aggravating circumstance if A also kills C in the course of the "robbery."

6. As a discourse community, courts are generally bound by rule to ordinary-language definitions—absent explicit authority to the contrary—and they are also bound by custom and precedent to conservative semantic interpretations.

7. In linguistic terminology, the HEAD NOUN of the *for* phrase must be construed as the GOAL of the VP; however, the GOAL in this case is not *pecuniary gain* but retribution.