

1975 WL 29569 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
March 5, 1975

*1 Honorable William W. Wilkins, Jr.
Solicitor
Thirteenth Circuit
Courthouse Annex
Room 214
Greenville, South Carolina 29601

Dear Solicitor Wilkins:

You have inquired as to the current application of the 'year-and-a-day' rule to homicide prosecution in South Carolina.

The 'year-and-a-day' rule was well established at Common Law. 40 C.J.S. Homicide § 12:

At common law, and in the absence of statutes otherwise providing if more than a year and a day intervene between the injury and the death of the victim, the injury is not legally deemed the cause of the death, and the person who inflicted it is not criminally responsible for the homicide.

The Oklahoma Supreme Court in [Elliot v. Mills](#), 335 P.2d 1104 (Okla. 1959) stated that the rule was first recognized in the statutes at Gloucester on October 4, 1278 (§ 6 Edw. 1 Ch. 9). It has received support from many jurisdictions where no statutory or judicial abrogation has occurred. 60 ALR3d 1323, superseding 20 ALR 1006 and 93 ALR 1470. The U.S. Supreme Court is in line with these jurisdictions. [Ball v. United States](#), 140 U.S. 118, 11 S.Ct. 761, 35 L.Ed. 377 (1891); [Louisville, E. and S.L.R. Co. v. Clarke](#), 152 U.S. 230, 14 S.Ct. 579, 38 L.Ed. 422 (1894).

The only modification of the rule in South Carolina research indicates is that contained in Section 16-54, 1962 Code of Laws (killing by stabbing). This section provides for a six month period in which the victim must succumb in order for a conviction to be effected under this provision.

In the absence of some sort of modification, judicial or legislative, the common law rule would be in force. Section 1-19, 1962 Code of Laws, as amended.

See also: 40 Am.Jur.2d, [Homicide](#) § 14; Perkins on Criminal Law (2d Ed., 1969) p. 28.

Therefore, it would seem that the year-and-a-day rule is still viable in South Carolina and remains a defense to a prosecution for any of the forms of homicide.

Yours truly,

Cameron B. Littlejohn, Jr.
Law Clerk

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