



North Carolina v. Lunsford

214 S.E.2d 619 (1975) | Cited 0 times | Court of Appeals of North Carolina | May 21, 1975

Defendant assigns numerous errors to the admission of certain testimony and the court's instructions to the jury. We have carefully considered each of these assignments, but find no merit in any of them.

Defendant assigns as error the entry of judgment on the verdict of assault with a deadly weapon returned by the jury. This assignment has merit.

The evidence tended to show that the robbery in question was perpetrated by defendant and one Louis Vega; that Vega was the one that entered the store, robbed the female clerk with the aid of a pistol, and shot her during the course of the robbery, causing superficial injuries; and that defendant was the "get-away-man", waiting in a car while Vega committed the robbery. Principal testimony against defendant was provided by Vega.

In *State v. Richardson*, 279 N.C. 621, 628, 185 S.E.2d 102 (1971), opinion by Chief Justice Bobbitt, the court said:

The crime of robbery includes an assault on the person. *State v. Hicks*, 241 N.C. 156, 159, 84 S.E.2d 545, 547 (1954). The crime of armed robbery defined in G.S. 14-87 includes an assault on the person with a deadly weapon. The crime of felonious assault defined in G.S. 14-32(a) is an assault with a deadly weapon which is made with intent to kill and which inflicts serious injury. These additional elements of the crime of felonious assault are not elements of the crime of armed robbery defined in G.S. 14-87.

If a person is convicted simultaneously of armed robbery and of the lesser included offense of assault with a deadly weapon, and both offenses arise out of the same conduct, as in *State v. Parker*, 262 N.C. 679, 138 S.E.2d 496 (1964), and *State v. Hatcher*, 277 N.C. 380, 177 S.E.2d 892 (1970), and separate judgments are pronounced, the judgment on the separate verdict of guilty of assault with a deadly weapon must be arrested. In such case, the armed robbery is accomplished by the assault with a deadly weapon and all essentials of this assault charge are essentials of the armed robbery charge. However, if a defendant is convicted simultaneously of armed robbery and of felonious assault under G.S. 14-32(a), neither the infliction of serious injury nor an intent to kill is an essential of the armed robbery charge. A conviction of armed robbery does not establish a defendant's guilt of felonious assault.

In the case at bar, defendant was convicted simultaneously of armed robbery and of the lesser



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included offense of assault with a deadly weapon, and both offenses arose out of the same conduct. Consequently, the judgment on the separate verdict of guilty of assault with a deadly weapon must be arrested.

In No. 73-CR-14647 (armed robbery case), no error.

In No. 73-CR-14685 (assault case), judgment arrested.

Disposition

In No. 73-CR-14647 (armed robbery case), no error. In No. 73-CR-14685 (assault case), judgment arrested.

