



**A T T O R N E Y S**

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## **Using Hands to Beat Robbery Victim, an On-Duty Officer, Was Not “Dangerous Weapon, Implement or Means” to Support Conviction of Armed Robbery**

**By Ralph B. Strickland, Jr.  
Kevin Smith**

*State v. Hinton*, No. 113PA06, North Carolina Supreme Court, January 26, 2007 [affirming, 176 N.C. App. 191, 625 S.E.2d 918, a North Carolina Court of Appeals unpublished opinion of 21 February 2006].

### **WHAT THIS IS ALL ABOUT**

The defendant was convicted of armed robbery (GS 14-87) based on using his fists to beat the robbery victim (an on-duty Raleigh police officer) and then steal his firearm.

### **THE RULING**

The court ruled that the use of hands to beat a robbery victim is not a “dangerous weapon, implement or means” to support a conviction of armed robbery (robbery with a dangerous weapon) under G.S. 14-87.

### **WHAT THE SUPREME COURT DETERMINED**

The court determined that the North Carolina General Assembly intended to require the state to prove that a defendant used an external dangerous weapon or means to convict a defendant of armed robbery. Thus, the use of hands, fists, or feet is insufficient.

Bear with us - each of you must read these facts, which we quote, almost but not quite, verbatim from the opinion:

### **Facts**

“Hinton [the defendant, Arris James Hinton] and Pam McCullers had been residing together in Raleigh until 16 May 2003, when Hinton decided to move to Florida to reside with another female acquaintance. Upon arriving at the Raleigh Greyhound bus station by taxi, defendant purchased a ticket to Orlando, Florida, on a bus scheduled to depart at 5:00 or 5:30 p.m.

“At the station Hinton discovered to his surprise that McCullers was present” [\*Hell hath no fury like a woman scorned]. “McCullers appeared angry at defendant, and they argued loudly for about five to ten minutes before Raleigh City Police Officer Kenneth Newton arrived.”

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“Officer Newton initially decided to separate defendant and McCullers, as he believed they were engaged in a domestic dispute over a television. After defendant exited the bus station, McCullers alleged that defendant did not live with her and that he had broken into her house and stolen her television. Officer Newton went outside to question defendant.

### **THIS WAS A BAD ASSAULT**

“Officer Newton was rendered unconscious by the ensuing altercation and, due to memory loss, he could not comprehensively testify to the events that occurred when he confronted defendant.”

“Although there was conflicting testimony concerning the events that followed, it is undisputed that defendant and Officer Newton had a physical altercation which ended with Officer Newton unconscious and defendant taking Officer Newton’s handgun from its holster.” [That is about as scary as it gets!] “An eyewitness saw Officer Newton questioning defendant approximately ten to fifteen feet from the bus station wall. Officer Newton grabbed defendant’s wrists, after which defendant pushed Officer Newton and the eyewitness lost sight of the altercation.

“After the eyewitness repositioned himself, he observed defendant strike a supine Officer Newton with his fists four times.” [Supine - lying on your back with your face up.]

“Defendant testified at trial that Officer Newton grabbed him by the bicep, placed a hand on his throat, pinned him against the wall, began to choke him, rammed his head against the wall, and ripped his shirt, and that he saw Officer Newton reaching for his handgun. Defendant also testified he feared Officer Newton would shoot him unless he took the handgun from Officer Newton’s possession.

“After taking the handgun, defendant held it up in the air and began to move to the front of the building. At that time other police officers arrived. Defendant placed the gun on the ground, got on his knees, and put his hands on his head.” [We’ll just bet this was not his first rodeo, as the saying goes.]

“After his arrest, defendant inquired about the health of Officer Newton and told the officers that Officer Newton ‘disrespected me, he put his hands on me, and I had to do what I had to do.’

### **THE OFFICER WAS SERIOUSLY INJURED**

**“Defendant’s assault resulted in substantial injuries to Officer Newton, including a concussion, a torn right iris which has resulted in permanent damage, a fractured right eye socket, a shattered nose, and the loss of his senses of taste and smell.**

“Hinton was convicted at trial of robbery with a dangerous weapon, assault inflicting serious injury, and assault with a deadly weapon inflicting serious injury stemming from his beating of Raleigh Police Officer Kenneth Newton.”

### **WHAT THE NORTH CAROLINA SUPREME COURT DID**

The Supreme Court granted the State’s petition for discretionary review in order to determine whether a defendant’s hands can be considered dangerous weapons under the robbery with a dangerous weapon statute, N.C.G.S. § 14-87. Because the Supreme Court held that a defendant’s hands are not dangerous weapons pursuant to the statute, the Court of Appeals decision was affirmed.

### **WHAT HAPPENS NOW?**

Upon remand to the trial court, the trial judge must enter judgment and sentence the defendant for the crime of common law robbery, not armed robbery (technically robbery with a dangerous weapon). The Supreme Court affirmed defendant's conviction for assault with a deadly weapon inflicting serious injury.

### **HERE IS A PARADOX, AND WE DO NOT MEAN A COUPLE OF PHYSICIANS**

Now if you read the preceding paragraph closely, it appears that the Supreme Court of North Carolina has ruled that hands are not "deadly or dangerous weapons" under the robbery with a dangerous weapons statute [GS 14-87], but are "deadly weapons" under the assault with a deadly weapon inflicting serious bodily injury statute [GS 14-32(b)]. The cases do indicate that, for a charge of assault with a deadly weapon, hands and feet can be deadly weapons if used against an infant or feeble person (and certainly Kenneth Newton was neither) or where they are used on a "weaker" person. We have no reason to believe that Newton was weaker than Hinton; actually we think Hinton got in a "sucker-punch" and went from there. So we are stuck with this *dichotomy* (a division into two usually contradictory parts or opinions) or a paradox (a statement or proposition that seems self-contradictory or absurd but in reality expresses a possible truth).

### **WHAT RALPH IS NOT FAMOUS FOR SAYING**

Remember as Ralph always says, "It does not have to make sense to be the law; you do not have to agree with it for it to be the law. But you had better know what the law is no matter how stupid it may seem to you; no matter how much you disagree."

### **THERE YOU ARE**

Why such is the law we two do not know, but there you are. This is an important matter about which all law enforcement officers must be clear, especially detectives and investigators.

### **FIX IT**

Now, it appears to us that in order to rectify this a new statute would have to be enacted making an assault on an officer by hands and fists, and the larceny of his sidearm, Taser, OC Spray, radio, handcuffs, knife or other law enforcement paraphernalia from his person, punishable just as armed robbery. The General Assembly is in session, some of you are in one or another of the various law enforcement fraternal organizations in this state, and you should get your legislative officers to bring this issue before that august body as soon as possible, if not sooner.

This is just a very sad situation, but it is what **you** face on a daily basis.

TRAIN YOURSELF PHYSICALLY FOR THE UNEXPECTED  
PREPARE YOURSELF MENTALLY FOR THE UNEXPECTED  
ALWAYS EXPECT THE UNEXPECTED

Here is the statute that DID NOT APPLY to these facts:

#### **§ 14 87. Robbery with firearms or other dangerous weapons.**

*(a) Any person or persons who, having in possession or with the use or threatened use of any firearms or other dangerous weapon, implement or means, whereby the life of a person is endangered or threatened, unlawfully takes or attempts to take personal property from another or from any place of business, residence or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime,*

*shall be guilty of a Class D felony.*

The elements of common-law robbery, which did apply in this case - a person guilty of this offense

1. commits larceny
2. from the person or from the person's presence
3. by violence or intimidation.

Armed robbery is a Class D felony; common-law robbery is a Class G felony.

And here is the statute on assault with a deadly weapon inflicting serious injury statute, which applied to the facts of this case:

**§ 14 32. Felonious assault with deadly weapon with intent to kill or inflicting serious injury; punishments.**

- (a) Any person who assaults another person with a deadly weapon with intent to kill and inflicts serious injury shall be punished as a Class C felon.*
- (b) Any person who assaults another person with a deadly weapon and inflicts serious injury shall be punished as a Class E felon.*
- (c) Any person who assaults another person with a deadly weapon with intent to kill shall be punished as a Class E felon.*

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