STATE v. WALKER

STATE v. James R. WALKER, Jr.

105 S.E.2d 101 (1958)

Supreme Court of North Carolina.

October 8, 1958.

Atty. Gen. Malcolm B. Seawell, and Asst. Atty. Gen. Ralph Moody, for the State.

Taylor & Mitchell, Raleigh, R. O. Murphy, Wilson, for defendant-appellant.

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WINBORNE, Chief Justice.

The bill of indictment under which defendant stands convicted is founded upon the statute G.S. § 163-196, which provides that "Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this section to be unlawful, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court." And the statute further provides that "It shall be unlawful * * * (4) For any person to be guilty of any boisterous conduct so as to disturb any member of any election or any registrar or judge of elections in the performance of his duties as imposed by law."

In the light of the provisions of the statute, G.S. § 163-196, this Court is constrained to hold that the bill of indictment here involved fails to particularize the crime charged, and is not sufficiently explicit to protect the accused against subsequent prosecutions for the same offense. State v. Scott, 241 N.C. 178, 84 S.E.2d 654, 655.

In the Scott case it is declared by the Court that "the allegations in a bill of indictment must particularize the crime charged and be sufficiently explicit to protect the defendant against a subsequent prosecution for the same offense."

Indeed it is stated in State v. Greer, 238 N.C. 325, 77 S.E.2d 917, 919, that "the authorities are in unison that an indictment, whether at common law or under a statute, to be good must allege lucidly and accurately all the essential elements of the offense endeavored to be charged. The purpose of such constitutional provisions is: (1) such certainty in the statement of the accusation as will identify the offense with which the accused is sought to be charged, (2) to protect the accused from being twice put in jeopardy for the same offense, (3) to enable the accused to prepare for trial, and (4) to enable the court, on conviction or plea of nolo contendere or guilty to pronounce sentence according to the rights of the case," citing State v. Cole, 202 N.C. 592, 163 S.E. 594; State v. Gregory, 223 N.C. 415, 27 S.E.2d 140; State v. Morgan, 226 N. C. 414, 38 S.E.2d 166; State v. Miller, 231 N.C. 419, 57 S.E.2d 392; State v. Gibbs, 234 N.C. 259, 66 S.E. 2d 883.

To like effect are decisions of this Court in cases both before and since the above summation of the principle. Among these are: State v. Rayner, 235 N.C. 184, 69 S. E.2d 155; State v. Thorne, 238 N.C. 392, 78 S.E.2d 140; State v. Nugent (Strickland), 243 N.C. 100, 89 S. E.2d 781; State v. Burton, 243 N.C. 277, 90 S.E.2d 390.

And while it is a general rule prevailing in this State that an indictment for a statutory offense is sufficient if the offense be charged in the words of the statute, State v. Jackson, 218 N.C. 373, 11 S.E.2d 149, 131 A. L.R. 143, the rule is inapplicable where as here the words do not in themselves inform the accused of the specific offense of which he is accused, so as to enable him to prepare his defense or plead his conviction or acquittal as a bar to further prosecution for the same offense, as where the statute characterizes the offense in mere general or generic terms, or does not sufficiently define the crime or set forth all its essential elements. In such situation the statutory words must be supplemented by other allegations which so plainly, intelligibly and explicitly set forth every essential element of the offense as to leave no doubt in the mind of the accused and the court as to the offense intended to be charged. State v. Cox, 244 N.C. 57, 92 S.E.2d 413, and cases cited. See among **[105 S.E.2d 104]** others State v. Watkins, 101 N.C. 702, 8 S.E. 346; State v. Whedbee, 152 N.C. 770, 67 S.E. 60, 27 L.R.A. ,N.S., 363; State v. Ballangee, 191 N.C. 700, 132 S.E. 795; State v. Cole, supra; State v. Gibbs, supra; State v. Greer, supra; State v. Eason, 242 N.C. 59, 86 S.E.2d 774; State v. Harvey, 242 N.C. 111, 86 S.E.2d 793; State v. Strickland, supra; State v. Jordan, 247 N.C. 253, 100 S.E.2d 497.

A defect appearing in a warrant or bill of indictment

can be taken advantage of only by motion to quash, aptly made, or by motion in arrest of judgment. State v. Lucas, 244 N.C. 53, 92 S.E.2d 401.

The most appropriate method of raising the question as to whether the bill of indictment charges the commission of any criminal offense is by motion to quash. Yet motion in arrest of judgment may be used to the same end. State v. Cochran, 230 N.C. 523, 53 S. E.2d 663; State v. Raynor, supra; State v. Thorne, supra; State v. Scott, supra; State v. Faulkner, 241 N. C. 609, 86 S.E.2d 81.

Indeed if the offense is not sufficiently charged in the indictment, this Court, ex mero motu, will arrest the judgment. See State v. Watkins, supra; State v. Thorne, supra; State v. Stonestreet, 243 N.C. 28, 89 S. E.2d 734; State v. Lucas, supra; State v. Jordan, supra; State v. Banks, 247 N.C. 745, 102 S.E.2d 245; State v. Helms, 247 N.C. 740, 102 S.E.2d 241.

Applying these principles of law, the bill of indictment, here involved, will be and it is hereby quashed. Hence verdict rendered and the sentence imposed are vacated.

Bill quashed.

Judgment vacated.

PARKER, J., not sitting.