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MURDER IN THE COMMISSION OF ROBBERY

In *Commonwealth v. Stelma*¹ there was evidence to the effect that the defendant, Stelma, hit the deceased, Doyle, and knocked him down; that Stelma then hit Doyle on the head with a rock; that Stelma then took some money from Doyle; and that later Doyle died as a result of the injuries inflicted by Stelma.

At the trial of Stelma for murder the Commonwealth contended that the murder was committed in the perpetration of robbery. The jury found Stelma guilty of murder in the first degree and imposed the death penalty.

On appeal the defendant contended that "the Commonwealth had failed to establish first degree murder" because "the intention to rob originated subsequent to the assault upon the deceased." In reply to this contention the Supreme Court said, "It is immaterial when the design to rob was conceived, *if the homicide occurred while the defendant was perpetrating or attempting to perpetrate a robbery.*"

It is quite obvious that "if the homicide occurred while the defendant was perpetrating or attempting to perpetrate a robbery" it was murder in the first degree; but the contention of the defendant was that the homicide did not occur *in the perpetration of or attempt to perpetrate a robbery*, because the blows which caused death were inflicted before the intent to rob was conceived. To this contention therefore the court's reply was merely "It is immaterial when the design to rob was conceived." This was incorrect.

There is authority to support the contention that if the intention to steal was conceived subsequent to the assault, no robbery was committed, because the force relied upon as constituting an element of robbery must have been used with the intention of accomplishing a theft.² And, of course, if no robbery was perpetrated the homicide could not have occurred in the perpetration of robbery. Furthermore, in such a case, the homicide could not have occurred in an *attempt* to commit robbery, for it is well settled that if all the results which a person intended, if accomplished, precisely as intended, would not have constituted a certain crime, e. g., robbery, an attempt to accomplish these results is not an *attempt* to commit that crime, e. g., robbery.

There is, however, authority to support the contention that a robbery was committed in this case even though the intent to steal was not conceived until after the blows which caused the death;⁴ but it does not follow that the homicide occurred in the perpetration of or attempt to perpetrate robbery.

¹C. v. Stelma, 327 Pa. 317.

²R. v. Edwards, 1 Cox C. C. 32; Shirley, Criminal Law p. 77; Cherry, Criminal Law p. 109; Trickett, Criminal Law, p. 662; S. v. St. John, 5 Jones (N.C.) 163; May, Criminal Law (3rd ed.), p. 235.

³C. v. Wright, 11 D. R. 144; C. v. Dougherty, 18 D. R. 858.

⁴Rex v. Lapiere, 2 East 708; Rex v. Moore, Leach 335; Klein v. P., 113 Ill. 596; Rex v. Blackman, 2 East 711.

Robbery, like other crimes, is composed of two elements, a physical element and a mental element. An essential factor of the mental element is an intention to steal.⁵ No physical acts done without this intention can constitute robbery or an attempt to rob.⁶ A homicide resulting from acts done without this intention therefore does not occur in the perpetration of or in an attempt to perpetrate robbery.

The defendant was fighting for his life; he had presented a reasonable contention; he was entitled to a more adequate answer than the laconic statement "it is immaterial."

W. H. HITCHLER.

AGGRAVATED ASSAULTS

In cases of assaults with intent to kill, or with some similar specific intent, difficult questions arise when the victim is not the person whom the assailant really desired to injure. This situation is presented in cases of mistaken identity and in cases of accident.

In cases of mistaken identity as, for example, where A, desiring to kill B, assaults C, believing him to be B, A is guilty of an assault with intent to kill C.¹ In such cases, there is no need to invoke the doctrine of transferred intent as is done in some of the decisions.² Since the assailant believes the victim to be the one whom he desires to kill, he desires to kill the victim. Thus, where the defendant lay in wait for the driver of a milk wagon, believing the driver to be the one whom he desired to kill when he was actually another, the defendant was convicted of assault with intent to kill the victim. The court said, "It was not a mistake as to the intent; it was merely a mistake as to the identity of him as to whom the intent was harbored. He intended . . . to strike the identical person whom he did strike believing him to be some other person."³ In a similar case of mistaken identity, it was said, "The purpose of the assailant was to accomplish the end immediately in view, and the actual victim was no less the intended direct physical object of the attack because at the time he may have been taken for some one else."⁴

In cases of accident, as, for example, where A shoots at B and accidentally hits C, the statute governing, and the indictment alleging the intent must be con-

⁵C. v. White, 133 Pa. 182; Rex v. Hall, 3 Car. & P. 409.

⁶Hanson v. S., 43 Ohio St. 375, 1 N. E. 136.

¹State v. Wansong, 271 Mo. 50; 195 S. W. 999.

²Reg. v. Smith, 33 E. L. & Eq. 567; contra, Rex v. Holt, 7 C. & P. 609.

³State v. Wansong, 271 Mo. 50; 195 S. W. 999.

⁴State v. Costa, 95 Conn. 140; 110 A. 875.