Armed Robbery by an Unarmed Defendant

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The court of appeals recently held that a defendant who was initially unarmed, then stole a weapon from a victim, was properly convicted of armed robbery because the defendant was armed with the weapon that he stole. Sound circular? Read on.

First off, the recent case is *State v. McMillan*. In brief, the evidence suggested that the defendant was a drug dealer; that he went to a car wash unarmed to talk to two people, at least one of whom was a customer; that the defendant somehow obtained a gun from the victims; that he used it to shoot and kill both victims; and that he ran off with the gun. The court of appeals found that the defendant had committed armed robbery, stating that "defendant's taking and use of the weapon were part of a continuous transaction, such that it was proper to convict defendant of the armed robbery of the same instrument used to commit the robbery."

McMillan cites *State v. Manness*, 363 N.C. 261 (2009), a case in which the defendant took an officer's gun, shot and killed the officer, and fled. Among many other offenses, the defendant was convicted of armed robbery. On appeal, he argued that he could not properly be "convicted of robbery with a dangerous weapon when the object taken in the robbery is also the firearm used to perpetrate the offense." The supreme court disagreed. First, it observed that the armed robbery statute, G.S. 14-87, requires a taking "with the use or threatened use of any firearms or other dangerous weapon." Second, it noted that "an armed robbery can be a continuous transaction," i.e., that the use of the weapon may come after the taking. (For example, the continuous transaction theory applies when a defendant takes an item from a victim, the victim gives chase, and the defendant brandishes a weapon to scare the victim off.) Finally, the court concluded that "defendant's use of the gun [to shoot the officer] was inseparable from the taking of it and defendant's efforts to flee." Therefore, it affirmed the defendant's armed robbery conviction.

Manness, in turn, cites *State v. Black*, 286 N.C. 191 (1974). In *Black*, the defendant asked a shopkeeper to see a knife the shopkeeper had for sale. When the shopkeeper handed the knife to the defendant, the defendant told her "[i]f you don't give us this knife, we're going to get you," then beat her into unconsciousness. After he was convicted of armed robbery, he appealed, claiming that the jury should have been instructed on common law robbery. The supreme court disagreed, stating that "defendant robbed [the victim] with a knife, or he did not rob [her] at all." The case is not completely on point, though, because the defendant does not seem to have argued that it was improper to convict him of armed robbery with the same weapon being both the object of the theft and what made the robbery "armed." Further, there was some evidence that the defendant tried to take money from the victim, which would have provided an alternate basis for sustaining the armed robbery conviction.

Even though *Black* doesn't provide much support, the results in *Manness* and *McMillan* seem right. They're not much different than the example I gave above about the defendant who brandishes a weapon to dissuade a victim from giving chase. In each case, the defendant uses a weapon to complete a taking that was initially accomplished without the use of a weapon. Of course, not every robbery in which a firearm is taken will amount to armed robbery. For example, if an unarmed defendant approaches a victim who is carrying a firearm in a locked case and, by threatening to punch the victim in the nose, takes the gun away from the victim and runs off with it, that's regular robbery, not armed robbery.