Document: C.R.S. 18-4-302

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Colorado Revised Statutes Annotated Title 18. Criminal Code (Arts. 1 — 26) Article 4. Offenses Against Property (Pts. 1 — 8) Part 3. Robbery (§§ 18-4-301 — 18-4-305)

18-4-302. Aggravated robbery.

(1) A person who commits robbery is guilty of aggravated robbery if during the act of robbery or immediate flight therefrom:

(a) He is armed with a deadly weapon with intent, if resisted, to kill, maim, or wound the person robbed or any other person; or

(b) He knowingly wounds or strikes the person robbed or any other person with a deadly weapon or by the use of force, threats, or intimidation with a deadly weapon knowingly puts the person robbed or any other person in reasonable fear of death or bodily injury; or

(c) He has present a confederate, aiding or abetting the perpetration of the robbery, armed with a deadly weapon, with the intent, either on the part of the defendant or confederate, if resistance is offered, to kill, maim, or wound the person robbed or any other person, or by the use of force, threats, or intimidation puts the person robbed or any other person in reasonable fear of death or bodily injury; or

(d) He possesses any article used or fashioned in a manner to lead any person who is present reasonably to believe it to be a deadly weapon or represents verbally or otherwise that he is then and there so armed.

(2) Repealed.

(3) Aggravated robbery is a class 3 felony and is an extraordinary risk crime that is subject to the modified presumptive sentencing range specified in section 18-1.3-401 (10).

(4) If a defendant is convicted of aggravated robbery pursuant to paragraph (b) of subsection (1) of this section, the court shall sentence the defendant in accordance with the provisions of section 18-1.3-406.

History

Source: L. 71:R&RE, p. 427, § 1.**C.R.S. 1963:**§ 40-4-302. **L. 77:**(1)(b) amended, p. 963, § 23, effective July 1. **L. 86:**(4) added, p. 777, § 9, effective July 1. **L. 89:**(1)(d) added and (2) repealed, pp. 831, 861, §§ 43, 156, effective July 1. **L. 90:**(1)(c) amended, p. 925, § 9, effective March 27. **L. 2002:** (4) amended, p. 1515, § 197, effective October 1. **L. 2004:**(3) amended, p. 636, § 8, effective August 4.

Annotations

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 18

C.R.S. Title 18, Art. 4

State Notes

ANNOTATION

IV. VERDICT AND SENTENCE.

I. GENERAL CONSIDERATION.

Law reviews.

For article, "The Definition of 'Deadly Weapon' Under the Colorado Criminal Code", see 15 Colo. Law. 1663 (1986).

Annotator's note.

Since § 18-4-302 is similar to former § 40-5-1, C.R.S. 1963, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

This section is not violative of equal protection.

People v. Aragon, 653 P.2d 715 (Colo. 1982).

The term "aggravated robbery"

means a robbery committed with a dangerous weapon and with the intent, if resisted, to kill, maim, or wound the victim or other person. Johnson v. People, 174 Colo. 75, 482 P.2d 105 (1971).

This section provides that the crime of aggravated robbery is established if in the perpetration of such robbery the accused is armed with a dangerous weapon with intent, if resisted, to kill, maim, or wound the person robbed or any other person. Vigil v. People, 158 Colo. 268, 406 P.2d 100 (1965).

"Robbery" in felony murder provision used in generic sense.

The term "robbery", as used in the felony murder statute, is to be construed as meaning this type of felony in its generic sense, including all types of robbery as defined in the statutes. People v. Raymer, 626 P.2d 705 (Colo. App. 1980), aff'd, 662 P.2d 1066 (Colo. 1983).

Any resulting death from robbery supports felony murder conviction.

Any death that results in the course of any type of robbery may serve as a basis for a felony murder conviction, and all such types of robbery are necessarily merged in a felony murder charge. People v. Raymer, 626 P.2d 705 (Colo. App. 1980), aff'd, 662 P.2d 1066 (Colo. 1983).

Aggravated robbery was merged in the offense of felony murder

and the constitutional protection against double jeopardy precludes conviction for both offenses. People v. Raymer, 626 P.2d 705 (Colo. App. 1980), aff'd, 662 P.2d 1066 (Colo. 1983).

Aggravated robbery is robbery committed under circumstances in which the actor's conduct creates an increased risk of injury to the victim or instills in the victim an enhanced fear of death or injury. People v. Raymer, 662 P.2d 1066 (Colo. 1983).

Attempt to commit aggravated robbery requires same culpability plus substantial step.

Criminal attempt to commit aggravated robbery requires that the offender act with the kind of culpability otherwise required for aggravated robbery and engage in a substantial step toward the commission of aggravated robbery. People v. Ledman, 622 P.2d 534 (Colo. 1981).

Explanation of terms before plea of guilty.

Where a defendant attempts to plead guilty to a violation of this section, it is mandatory that the court explain to him the nature and elements of "aggravated" robbery, and determine that the accused understands the nature of the charge. People v. Riney, 176 Colo. 221, 489 P.2d 1304 (1971).

A dangerous weapon

is an article of offense which in its intended or easily adaptable use is likely to produce death or

is an article of offense which in its intended or easily adaptable use is likely to produce death or serious bodily injury. Hutton v. People, 156 Colo. 334, 398 P.2d 973 (1965).

"Aggravated" and "simple" robbery are but two degrees of the same offense.

The former requires that the perpetrator have the intent, if resisted, to kill, maim, or wound the victim. The latter offense does not require this intent. Atwood v. People, 176 Colo. 183, 489 P.2d 1305 (1971).

Aggravated robbery is distinguished from simple robbery by the fact that the accused or a confederate is armed with a dangerous weapon with the intent, if resisted, to maim, wound, or kill. People v. Small, 177 Colo. 118, 493 P.2d 15 (1972).

Simple robbery is a lesser included offense within the charge of aggravated robbery. People v. Bartsch, 37 Colo. App. 52, 543 P.2d 1273 (1975).

Simple robbery distinguished.

The essential difference between simple robbery and that form of aggravated robbery requiring the culpability element of "knowingly" is that the latter offense requires the defendant to "knowingly" put the person robbed or any other person in reasonable fear of death or bodily injury by the use of force, threats or intimidation with a deadly weapon. People v. Aragon, 653 P.2d 715 (Colo. 1982).

Felony menacing distinguished.

The offense of aggravated robbery may be committed without also committing felony menacing; no merger occurs because the requirement in the felony menacing statute that the actor knowingly place a victim in fear of "serious bodily injury" is distinguishable from the requirement that the robber knowingly place a victim in fear of "bodily injury". People v. Sisneros, 44 Colo. App. 65, 606 P.2d 1317 (1980).

Criminal attempt to commit aggravated robbery

requires that the offender act with the kind of culpability otherwise required for the commission of aggravated robbery and that he engage in conduct constituting a substantial step towards the commission of that offense. People v. Aragon, 653 P.2d 715 (Colo. 1982).

Conviction of attempted aggravated robbery

does not require a showing of specific intent to commit the underlying crime. People v. Krovarz, 697 P.2d 378 (Colo. 1985).

Convictions of both aggravated robbery and conspiracy to commit robbery do not violate double jeopardy.

People v. Rivera, 178 Colo. 373, 497 P.2d 990 (1972).

Conviction for aggravated robbery and commission of a crime of violence

does not violate double jeopardy and equal protection. People v. Schruder, 735 P.2d 905 (Colo. App. 1986).

Stipulation by attorney that a guilty verdict to aggravated robbery also established that the defendant was guilty of a crime of violence did not violate defendant's rights

since the jury returned a verdict which showed that it found that the defendant placed another in fear by the use of a deadly weapon and since defendant failed to show how a special interrogatory could have produced a different result. People v. McMullen, 738 P.2d 23 (Colo. App. 1986).

When the crime of violence statute is superimposed on convictions for both aggravated robbery and simple robbery,

there are real differences between the two forms of robbery. These differences provide substantial support for the disparate penalty applicable to a crime of violence finding which is superimposed on a conviction for aggravated robbery, and such does not violate equal protection of the laws. People

a conviction for aggravated robbery, and such does not violate equal protection of the laws. People v. Young, 758 P.2d 667 (Colo. 1988).

It is possible to commit an aggravated robbery without contemporaneously perpetrating a second degree assault.

People v. Grant, 40 Colo. App. 46, 571 P.2d 1111 (1977); People v. Toomer, 43 Colo. App. 182, 604 P.2d 1180 (1979).

Assault with intent to rob is lesser included offense of aggravated robbery.

Therefore, since assault with intent to rob is a lesser included offense of aggravated robbery, it was error for the court to permit both verdicts to stand. Thus, the conviction on the lesser included offense must be set aside. People v. Stephens, 188 Colo. 8, 532 P.2d 728 (1975).

As is attempted robbery.

Attempted robbery without the element of the specific intent, if resisted, to kill, maim, or wound is a lesser included offense of aggravated robbery which requires the specific intent, if resisted, to kill, maim, or wound. People v. Trujillo, 184 Colo. 387, 524 P.2d 1379 (1974).

If a robbery or attempted robbery is established but without additional specific intent, if resisted, to kill, maim, or wound, a person charged with aggravated robbery or attempted aggravated robbery can be found guilty of simple robbery or attempted simple robbery under the lesser included offense in a case where only the greater crime is charged. People v. Trujillo, 184 Colo. 387, 524 P.2d 1379 (1974).

Aggravated robbery and assault with intent to murder separate offenses.

The offense of assault with intent to murder requires proof of a specific intent to kill, a fact not necessary to sustain a charge of aggravated robbery. On the other hand, aggravated robbery requires proof of a robbery, a fact not necessary for assault. Therefore, punishment for both of these offenses committed during one course of conduct does not violate the constitutional prohibition against double jeopardy for the same offense. People v. Bugarin, 181 Colo. 62, 507 P.2d 875 (1973).

An argument of the defendants, based on the assumption that to be guilty of aggravated robbery they had to be guilty of assault with intent to murder, is clearly unfounded. People v. Rivera, 178 Colo. 373, 497 P.2d 990 (1972).

Double jeopardy barred convictions for both aggravated robbery and assault with a deadly weapon.

Under the former criminal code, it was impossible to commit aggravated robbery without contemporaneously perpetuating an assault with a deadly weapon. Since assault with a deadly weapon was the lesser included offense, double jeopardy barred a conviction for both crimes. People v. Hancock, 186 Colo. 30, 525 P.2d 435 (1974).

Lesser included offense.

Attempt to commit robbery is a lesser included offense of attempt to commit aggravated robbery. People v. Johnson, 634 P.2d 407 (Colo. 1981).

When aggravated robbery is lesser included offense of felony murder.

Where the defendant's conviction for felony murder is based upon the causation of the robbery victim's death during the course of the robbery, a charge of aggravated robbery of the same victim is a lesser included offense of the felony murder charge within the meaning of § 18-1-408(5)(c). People v. Raymer, 662 P.2d 1066 (Colo. 1983).

Where defendant was convicted of aggravated robbery and was adjudicated a habitual criminal, a subsequent reversal

of the adjudication of habitual criminality negated its sentence enhancing effect and required resentencing for the underlying charge since it was not clear from the record that the robbery sentence was imposed independently from the habitual criminal adjudication. When resentencing

the trial court could consider all relevant and material factors, including new evidence incorporated in a supplemental presentence report. People v. Watkins, 684 P.2d 234 (Colo. 1984).

Applied

in Bernard v. Tinsley, 144 Colo. 244, 355 P.2d 1098 (1960), cert. denied, 365 U.S. 830, 81 S. Ct. 718, 5 L. Ed. 2d 708 (1961); Bingham v. People, 157 Colo. 92, 401 P.2d 255 (1965); Cowman v. People, 157 Colo. 120, 401 P.2d 831 (1965); Bustos v. People, 158 Colo. 451, 408 P.2d 64 (1965); Neighbors v. People, 161 Colo. 587, 423 P.2d 838 (1967); Jaggers v. People, 174 Colo. 430, 484 P.2d 796 (1971); People v. Marchese, 37 Colo. App. 65, 541 P.2d 1264 (1975); People v. Brionez, 39 Colo. App. 396, 570 P.2d 1296 (1977); People v. Warren, 196 Colo. 75, 582 P.2d 663 (1978); Wells v. People, 197 Colo. 350, 592 P.2d 1321 (1979); People v. Culbertson, 198 Colo. 153, 596 P.2d 1200 (1979); Watson v. District Court, 199 Colo. 76, 604 P.2d 1165 (1980); Graham v. People, 199 Colo. 439, 610 P.2d 494 (1980); People v. Cabral, 629 P.2d 575 (Colo. 1981); People v. Moody, 630 P.2d 74 (Colo. 1981); People v. Bravo, 630 P.2d 612 (Colo. 1981); People v. Scott, 630 P.2d 615 (Colo. 1981); People v. Henry, 631 P.2d 1122 (Colo. 1981); People v. Morgan, 637 P.2d 338 (Colo. 1981); People v. Anderson, 637 P.2d 354 (Colo. 1981); People v. Swanson, 638 P.2d 45 (Colo. 1981); People v. Lowery, 642 P.2d 515 (Colo. 1982); People v. Bueno, 646 P.2d 931 (Colo. 1982); People v. Hogan, 649 P.2d 326 (Colo. 1982); Watkins v. People, 655 P.2d 834 (Colo. 1982); People v. Cooper, 662 P.2d 478 (Colo. 1983); People v. Akins, 662 P.2d 486 (Colo. 1983).

II. ELEMENTS OF OFFENSE.

Culpable mental state implied.

A statute will be presumed to conform to constitutional requirements, and a culpable mental state will be implied from a particular statute which does not contain an intent element on its face. People v. Smith, 620 P.2d 232 (Colo. 1980).

Intent is a necessary element in the proof of aggravated robbery,

and this section, covering the offense, must be given its full force and effect. Funk v. People, 90 Colo. 167, 7 P.2d 823 (1932); Gonzales v. People, 166 Colo. 557, 445 P.2d 74 (1968).

It is not essential that a bandit must demonstrate an intent to kill, maim, or wound

the victim of the holdup. Vigil v. People, 158 Colo. 268, 406 P.2d 100 (1965).

Fact that defendant was armed with intent to harm only goes to the grade and punishment of crime.

In a prosecution for aggravated robbery under this section, the fact that defendant was armed with a dangerous weapon with intent to kill or wound his victim if resisted, is not the essence of the offense of robbery, and proof of these facts is not necessary for a conviction, but goes only to the grade of the crime and punishment to be inflicted. Funk v. People, 90 Colo. 167, 7 P.2d 823 (1932).

Being dangerously armed and having the intent described are not essential to the perpetration of a robbery, but proof thereof goes to the degree of the crime, and affects only the punishment to be suffered in event of conviction. Hutton v. People, 156 Colo. 334, 398 P.2d 973 (1965).

A simulated pistol, not per se dangerous, may become so

factually because of its substance, size, and weight as a bludgeon wielded within striking distance of the person to be robbed. Hutton v. People, 156 Colo. 334, 398 P.2d 973 (1965).

Section 18-1-901 prescribes test to determine whether certain items constitute deadly weapons.

Section 18-1-901 (3)(e) expressly prescribes a test to determine whether items other than firearms, knives, and bludgeons are deadly weapons, based not on the intrinsic nature of the items but upon their use or intended use. Bowers v. People, 617 P.2d 560 (Colo. 1980) (decided prior to

1981 amendment to § 18-1-901 (3)(e)).

Armed with and in possession of a deadly weapon.

This element of aggravated robbery may be proven by relying on presumption created by subsection (2). People v. Castenada, 765 P.2d 641 (Colo. App. 1988), cert. denied, 782 P.2d 1197 (Colo. 1989).

Quart bottle of whiskey is not a bludgeon

but it may satisfy the statutory test defining a deadly weapon as a "device, instrument, material, or substance, . . . which in the manner it is used . . . is capable of producing death or serious bodily injury". Bowers v. People, 617 P.2d 560 (Colo. 1980) (decided prior to 1981 amendment to § 18-1-901 (3)(e)).

The state of mind or intent is usually manifested by circumstances

and proof thereof necessarily is by circumstantial evidence, and, of course, such intent is ordinarily inferable from the facts. The state of mind of the defendant is concealed within the mind and is not usually, perhaps never, susceptible of direct proof. Ruark v. People, 157 Colo. 320, 402 P.2d 637 (1965).

Circumstantial evidence is sufficient to at least present a jury question as to whether the defendant possessed the requisite specific intent to maim, wound, or kill, if resisted. Elliott v. People, 176 Colo. 373, 490 P.2d 687 (1971).

Differences within and constitutionality of charging under subsection (1).

Subsections (1)(b) and (1)(c) proscribe different conduct. To be found guilty based on threats or intimidation under subsection (1)(b), a defendant (or the principal, if the defendant is guilty as a complicitor) must knowingly threaten or intimidate a victim with a deadly weapon. To be found guilty under subsection (1)(c), a defendant (or the principal, if the defendant is guilty as a complicitor) need not use a deadly weapon to threaten or intimidate the victim. Because the two subsections proscribe different means by which a victim may be robbed through the use of threats or intimidation, they do not contain identical statutory elements, and therefore do not punish identical conduct. There is no equal protection violation where there are reasonable differences between the behaviors proscribed in the statutes, and the differences are both real in fact and reasonably related to the general purposes of the legislation. People v. Firm, 2014 COA 32, 342 P.3d 537.

Constitutionality and intent of subsection (2).

Clearly, the intent of the general assembly in passing subsection (2) was to prevent armed robbers from escaping aggravated robbery charges by simply concealing deadly weapons in their pockets or under other wraps or devices. Recognizing this legislative intent, the constitutionality of the statute is upheld. People v. Lorio, 190 Colo. 373, 546 P.2d 1254 (1976).

Subsection (2) does not unconstitutionally deny defendant equal protection of the laws

by removing the only real distinction between simple and aggravated robbery. People v. Murphy, 192 Colo. 411, 559 P.2d 708 (1977).

Or due process.

Subsection (2) of this section, which makes a robber's representation that he is armed prima facie evidence that he is in fact armed, does not deny a defendant due process by shifting the prosecution's burden of proof. People v. Hawkins, 192 Colo. 535, 560 P.2d 833 (1977).

The presumption created by subsection (2) does not violate a defendant's constitutional right against self-incrimination.

People v. Lorio, 190 Colo. 373, 546 P.2d 1254 (1976).

As it permits jury inference as to possession.

The presumption created by subsection (2) meets the test described by the United States supreme court in that it permits the jury to infer that the defendant actually possessed a deadly weapon when he has made such a representation to another. People v. Lorio, 190 Colo. 373, 546 P.2d 1254 (1976).

Prosecution must still prove additional element.

Subsection (2) merely permits the jury to infer that a defendant told the truth when he asserted that he was armed. The prosecution is still required to prove an additional element over and above what is required to prove simply robbery. People v. Murphy, 192 Colo. 411, 559 P.2d 708 (1977).

Shifts only part of burden to defendant.

The statutory presumption created by subsection (2) does not shift the entire burden of proof to the defendant, but merely the burden of going forward with respect to certain evidence. People v. Lorio, 190 Colo. 373, 546 P.2d 1254 (1976).

Instruction regarding subsection (2) did not shift the burden of proof; rather, the instruction and statute merely shifted the burden of going forward with respect to certain evidence. People v. Jones, 191 Colo. 385, 553 P.2d 770 (1976).

This section and an instruction phrased in the language of this section, with the exception that it does not state that representations of being armed shall be considered "prima facie" evidence that the defendant was armed, do not operate to shift the burden of proof. People v. Hawkins, 192 Colo. 535, 560 P.2d 833 (1977).

Attempted robbery without aggravation does not include any element not included in attempted robbery with aggravation.

People v. Trujillo, 184 Colo. 387, 524 P.2d 1379 (1974).

Inference of possession by victim.

In the light of common sense and experience, the victim of a robbery -- possessed of reasonable belief -- may infer that a defendant possesses a deadly weapon if the defendant makes such a representation. People v. Lorio, 190 Colo. 373, 546 P.2d 1254 (1976).

Simple robbery and aggravated robbery both require the intent to rob.

People v. Trujillo, 184 Colo. 387, 524 P.2d 1379 (1974).

III. TRIAL AND PROSECUTION.

A. Indictment and Information.

Information held sufficient.

Johnson v. Tinsley, 155 Colo. 346, 394 P.2d 842 (1964).

Indictment need not specify which method of committing offense charged.

As in the case of principals and complicitors, an indictment under this section need not specify which of the two methods of committing the offense is being charged. People v. Martinez, 42 Colo. App. 307, 600 P.2d 82 (1979).

Variance between indictment and proof not fatal to prosecution.

A variance between the indictment, which accused defendant of having an armed confederate present, and the proof, which showed defendant as the person armed, was not fatal to a prosecution under this section. People v. Martinez, 42 Colo. App. 307, 600 P.2d 82 (1979).

B. Evidence.

Evidence of conspiracy to commit aggravated robbery

is not inadmissible and is not meaningless and to be ignored merely because plans to commit

robbery were frustrated and ended with commission of second degree assault. People v. Shannon, 189 Colo. 287, 539 P.2d 480 (1975).

Admission of weapon proper.

Where no weapon was seen by victim of aggravated robbery, and where tire iron found by cash register did not belong to service station and had not been seen in service station prior to robbery, and where wound on victim's head appeared to have been inflicted by tire tool or similar instrument, admission of tire tool was not error. People v. Bedwell, 181 Colo. 20, 506 P.2d 365 (1973).

Evidence of intent sufficient to go to jury.

McGraw v. People, 154 Colo. 368, 390 P.2d 819 (1964).

Where it was contended that the evidence was insufficient to prove beyond a reasonable doubt that the gunman had the requisite specific intent, if resisted, to kill, maim, or wound the person robbed or any other person, it was held that the record showed sufficient circumstances from which the jury could reasonably infer that the gunman had the state of mind necessary to sustain the conviction of aggravated robbery. Schott v. People, 174 Colo. 15, 482 P.2d 101 (1971).

The pointing of the gun in a threatening manner is sufficient to support the finding of specific intent. Schermerhorn v. People, 175 Colo. 256, 486 P.2d 428 (1971).

A threat by a defendant to shoot a victim is sufficient to require submission of an aggravated robbery charge to a jury. Candelaria v. People, 177 Colo. 136, 493 P.2d 355 (1972).

Evidence held sufficient to support conviction of aggravated robbery.

Atwood v. People, 176 Colo. 183, 489 P.2d 1305 (1971); People v. Bedwell, 181 Colo. 20, 506 P.2d 365 (1973); People v. Renfro, 181 Colo. 159, 508 P.2d 396 (1973); People v. Hawkins, 192 Colo. 535, 560 P.2d 833 (1977); People v. Moseley, 193 Colo. 256, 566 P.2d 331 (1977); People v. Larson, 194 Colo. 338, 572 P.2d 815 (1977); People v. Williams, 40 Colo. App. 30, 569 P.2d 339 (1977); People v. Bowers, 42 Colo. App. 467, 600 P.2d 95 (1979); People v. Gregg, 298 P.3d 983 (Colo. App. 2011).

Where defendant is found hiding near scene of robbery with some of the masks and other items used to perfect the robbers' disguise, evidence against him is substantial and supports his conviction. Velarde v. People, 179 Colo. 207, 500 P.2d 125 (1972).

Evidence sufficient to sustain attempted aggravated robbery conviction.

People v. Williams, 40 Colo. App. 30, 569 P.2d 339 (1977).

Evidence sustained defendant's conviction as accessory to aggravated robbery.

People v. Jones, 184 Colo. 96, 518 P.2d 819 (1974).

C. Jury.

Questions for jury.

Under an information charging aggravated robbery under this section, the jury must first determine from the evidence whether or not a robbery was committed, and if so, whether defendant was armed with dangerous weapons, and had the intent, if resisted, to kill or wound his victim. Funk v. People, 90 Colo. 167, 7 P.2d 823 (1932).

Character of weapon is jury question.

Whether an article used as a weapon is dangerous may be, because of its very character or the circumstances of its use, a matter of doubt, and in such case the question should be left to the jury under an instruction as to what constitutes a dangerous weapon. Hutton v. People, 156 Colo. 334, 398 P.2d 973 (1965).

D. Instructions.

Instructions on culpable mental state.

A culpable mental state is a requisite element of aggravated robbery. If jury instructions taken as a whole are confusing, or imply that no mental state is required to convict, these instructions are constitutionally deficient. People v. Ward, 673 P.2d 47 (Colo. App. 1983).

Instructions using term "aggravated".

The use of the word "aggravated" in the information is a matter of form only. There was no objection to instructions which used the word "aggravated", and this did not constitute plain error affecting substantial rights. Moore v. People, 164 Colo. 222, 434 P.2d 132 (1967).

Simple robbery instruction is mandatory

when the evidence would justify acquitting a defendant of aggravated robbery while convicting him of simple robbery. Tacorante v. People, 624 P.2d 1324 (Colo. 1981).

Where no rational basis for simple robbery conviction, court may refuse to instruct.

Where the evidence presented to the jury showed, at a minimum, that the defendant had participated as a complicitor in the commission of an aggravated robbery, as proscribed by this section, there was no rational basis on which the jury could have acted to acquit the defendant of aggravated robbery while convicting him of simple robbery, and the trial court did not therefore err in refusing to instruct the jury on the latter offense. People v. Glenn, 200 Colo. 416, 615 P.2d 700 (1980).

Use of term "simple robbery".

Where the trial court failed to instruct the jury as to what the court meant in referring to "simple robbery" as a lesser included offense of aggravated robbery, but where the instruction in question was worded substantially in the language of the statute, and the record shows that the instructions when read as a whole are not complicated nor difficult to understand, and the jury was fully capable of understanding the concept of "simple robbery" as a lesser included offense of aggravated robbery, there was no error. People v. Dago, 179 Colo. 1, 497 P.2d 1261 (1972).

Instruction on specific intent must be delivered to the jury

in cases of aggravated robbery. Gonzales v. People, 166 Colo. 557, 445 P.2d 74 (1968).

A defendant charged with aggravated robbery is entitled to an instruction on the element of specific intent to kill, maim, or wound, if resisted, whether requested or not. Hampton v. People, 171 Colo. 101, 465 P.2d 112 (1970).

Failure to so instruct requires reversal.

A verdict of guilty cannot stand where the element of specific intent is material as to one count of the information or indictment which is related to and joined with a count of conspiracy, when the court's instructions on intent covering either count are erroneous. Gonzales v. People, 166 Colo. 557, 445 P.2d 74 (1968).

Where the supreme court fails to properly instruct the jury on a necessary element of the crime charged, a verdict of guilty as to aggravated robbery cannot stand. Hampton v. People, 171 Colo. 101, 465 P.2d 112 (1970).

Where intent is uncertain, jury must be instructed as to simple robbery.

In a prosecution for aggravated robbery under this section, there being evidence tending to negative the specific intent necessary to constitute the crime, it was reversible error for the trial court to refuse to instruct the jury on the question of simple robbery, and to refuse to submit to it a form of verdict covering that feature of the case. Funk v. People, 90 Colo. 167, 7 P.2d 823 (1932).

Where aggravated robbery has been charged, the trial judge must give an instruction on the lesser offense of simple robbery when such instruction is requested by the defendant and when it is supported by the evidence. Hollon v. People, 170 Colo. 432, 462 P.2d 490 (1969); Johnson v. People, 172 Colo. 72, 470 P.2d 37 (1970); People v. Reed, 180 Colo. 16, 502 P.2d 952 (1972)

People, 172 Colo. 72, 470 P.2d 37 (1970); People v. Reed, 180 Colo. 16, 502 P.2d 952 (1972).

Where the jury can convict defendants of aggravated robbery, it is not prejudicial error to submit instructions and verdicts to the jury on the offense of simple robbery. Atwood v. People, 176 Colo. 183, 489 P.2d 1305 (1971).

Refusal may be reversible error.

There was testimony from the victim that there was no violence and no threats. The only evidence of intent was the presence of the loaded pistol. The evidence was such that the jury could find that the people had failed to prove the element of specific intent beyond a reasonable doubt, thus, it was reversible error for the trial judge to refuse to instruct, as requested, on simple robbery. Hollon v. People, 170 Colo. 432, 462 P.2d 490 (1969).

Required instructions by court.

Where the defendant is charged with aggravated robbery and declines the court's offer to instruct on simple robbery, the court is obligated to instruct on the lesser nonincluded offense of theft only if there is no evidence of the defendant's guilt of the lesser included offense of simple robbery. People v. Graham, 41 Colo. App. 390, 590 P.2d 511 (1978), aff'd, 199 Colo. 439, 610 P.2d 494 (1980).

Lesser theft offense instruction is properly refused when an element that distinguishes the greater offense of aggravated robbery from the lesser offense is uncontested.

Defendant charged with aggravated robbery and felony murder was not entitled to lesser theft offense instruction because there was no evidence disputing the use of force against, and the killing of, the victim. People v. Villalobos, 159 P.3d 624 (Colo. App. 2006).

Evidence in aggravated robbery case held insufficient to support instruction on simple robbery.

Sisneros v. People, 174 Colo. 543, 484 P.2d 1207 (1971); People v. Reed, 180 Colo. 16, 502 P.2d 952 (1972).

Where the suspect pursued by police fired a shot, the defendant charged with aggravated robbery was not entitled to an instruction on simple robbery; he had manifested the specific intent to maim, wound, or kill, if resisted, and placed himself outside of the ambit of the rule requiring an instruction on the lesser offense. Johnson v. People, 172 Colo. 72, 470 P.2d 37 (1970).

Refusal of accessory instruction proper.

The court's refusal to instruct the jury that the crime of accessory during the fact is also a lesser included offense when robbery is charged, which was the defendant's principal theory of the case, was not error because accessory during the fact is a separate and distinct offense which was not charged and which could not properly have been the subject of an instruction. Maes v. People, 178 Colo. 46, 494 P.2d 1290 (1972).

The term "confederate" as used in subsection (1)(c) means more than a bystander.

The confederate must be "aiding and abetting the perpetration of the robbery". People v. Wilford, 111 P.3d 512 (Colo. App. 2004).

The term "confederate" is not a highly technical one and is well within the comprehension of the jury. The trial court did not err, therefore, in rejecting defendant's jury instruction that incorporated a definition of "confederate" from a legal dictionary or in declining to define the term. People v. Wilford, 111 P.3d 512 (Colo. App. 2004).

Instruction based on subsection (2) properly refused.

There being no question that a deadly weapon had been utilized during the robbery, no issue concerning subsection (2) of this section was raised. Hence, the trial court properly refused a tendered instruction based on that subsection. People v. Roberts, 37 Colo. App. 490, 553 P.2d 93 (1976).

Instruction adequate.

Where the jury was instructed in plain understandable English that a conviction for aggravated robbery requires that the defendant have the specific intent to kill, maim, or wound, if resisted in his attempt to commit the robbery, that instruction, read together with the other instruction requiring the people to prove every element beyond a reasonable doubt, adequately apprised the jury of the law, and the jury was adequately instructed on the elements of aggravated robbery. People v. Crawford, 183 Colo. 166, 515 P.2d 631 (1973).

Because the jury indicated it was confused about the meaning of the phrase "use of force or threat or intimidation" and whether carrying a gun meant the same as using a gun, it was proper for the court to give a supplemental instruction.

People v. Wilford, 111 P.3d 512 (Colo. App. 2004).

An instruction which permits the jury to draw inferences from the unexplained possession of recently stolen property

is proper in cases where robbery is charged. People v. Grubbs, 39 Colo. App. 436, 570 P.2d 1299 (1977).

To present an affirmative defense for abandonment to the jury, defendant must present "some credible evidence" on the issue of the claimed defense.

It is not necessarily the case, however, that the defense of abandonment is not available once defendant has injured the victim. O'Shaughnessy v. People, 2012 CO 9, 269 P.3d 1233.

IV. VERDICT AND SENTENCE.

Verdicts held not inconsistent.

Since the statutory elements of aggravated robbery and theft over $200 (now $300) are different, jury verdicts convicting a defendant of aggravated robbery of an employee but acquitting the defendant of theft from the employer are not inconsistent and repugnant. People v. Williams, 40 Colo. App. 30, 569 P.2d 339 (1977).

Assault with a deadly weapon is a lesser included offense of aggravated robbery,

and since the jury convicted the defendant of aggravated robbery, his conviction for the included offense of assault with a deadly weapon must be set aside. People v. Bugarin, 181 Colo. 62, 507 P.2d 875 (1973).

Acquittal of conspiracy charge required.

Where the very same evidence which the jury did not believe was sufficient to prove that the defendant participated in the robbery was the only evidence which could prove him guilty of conspiracy, the conspiracy verdict could not stand. Renfrow v. People, 176 Colo. 160, 489 P.2d 582 (1971).

Verdict of aggravated robbery sufficient.

A verdict in a prosecution under this section which finds the defendant guilty of "robbery with a deadly weapon, to-wit, a gun", is not insufficient because it does not include the words, "as charged in the information", or does not more definitely specify the crime as defined by statute. Van Diest v. People, 71 Colo. 121, 204 P. 606 (1922).

Where the charge in count one of the information alleged that defendant committed the robbery with the intent to maim, wound, or kill, if resisted, the trial court instructed specifically in the elements necessary to sustain the charge of "aggravated" robbery, and the jury found defendant guilty of "aggravated" robbery "as charged in the first count of the information", this was sufficient to warrant the imposition of the more severe penalty authorized by this section when a robbery is committed with intent to maim, wound, or kill, if resisted. Lucero v. People, 173 Colo. 94, 476 P.2d 257 (1970).

Where the verdict states that defendant is found guilty of "aggravated robbery as charged in the information herein", and the information describes in detail the more serious robbery involving the

information herein", and the information describes in detail the more serious robbery involving the increased punishment, there remains no basis for the argument that the verdict found the defendant guilty of only simple robbery. Johnson v. People, 174 Colo. 75, 482 P.2d 105 (1971).

Verdict treated as conviction of simple robbery.

Where the defendant is charged with aggravated robbery, but the case is submitted to the jury upon an instruction for simple robbery, and the jury returns a verdict of "guilty as charged", the court should treat the verdict as a finding of guilty as to simple robbery. Hampton v. People, 171 Colo. 101, 465 P.2d 112 (1970).

A charge of aggravated robbery and commission of a violent crime require consistent verdicts when based upon the same facts.

People v. Castenada, 765 P.2d 641 (Colo. App. 1988), cert. denied, 782 P.2d 1197 (Colo. 1989).

Conviction for conspiracy to commit aggravated robbery, as defined in subsection (1)(b), necessarily requires crime of violence sentencing.

People v. Terry, 961 P.2d 500 (Colo. App. 1997), aff'd, 977 P.2d 145 (Colo. 1999).

Consecutive sentences for aggravated robbery convictions not mandatory

where defendant was not separately charged with a "crime of violence" and was convicted under this section generally, but not subsection (1)(b) specifically. People v. McCoy, 944 P.2d 577 (Colo. App. 1996).

Use of a sealed verdict in prosecution for aggravated robbery was not improper.

People v. Herrera, 182 Colo. 302, 512 P.2d 1160 (1973).

Fifteen to 20-year sentence for aggravated robbery was not excessive.

People v. Colasanti, 626 P.2d 1136 (Colo. 1981).

It was not improper for trial court to consider during sentencing that violent crimes have a greater public impact in small rural communities than in larger urban ones

since a sentencing court should always consider the interests of the public involved and this factor was not decisive of the court's decision. People v. Palmer, 888 P.2d 348 (Colo. App. 1994).

Convictions for two counts of aggravated robbery arising out of the same criminal episode are not multiplicitous.

The issue turns on whether two robberies can arise out of a single taking of property. The inquiry then focuses on whether the crime of robbery is intended to protect people or property. If robbery is intended to protect people, a single taking could support multiple convictions if the one item is taken from multiple people with control over the item. The plain language of the robbery statute is ambiguous as to whether it is intended to protect people or property. The common law history of robbery and case law indicates robbery statutes are intended to protect people. Therefore, a single taking can support multiple convictions for robbery if the taking is made in the presence of multiple victims. People v. Borghesi, 66 P.3d 93 (Colo. 2003); People v. Clifton, 74 P.3d 519 (Colo. App. 2003).

Defendant's acts constitute separate offenses as to each victim and conviction is not multiplicitous where the common property taken from the first victim was taken in the second victim's presence. People v. Sweeney, 78 P.3d 1133 (Colo. App. 2003).

Research References & Practice Aids

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Cross references:

For the legislative declaration contained in the 2002 act amending subsection (4), see section 1 of chapter 318, Session Laws of Colorado 2002.

Colorado Revised Statutes Annotated

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