

SUPREME COURT OF NORTH CAROLINA

State v. Silas, 360 N.C. 377

627 S.E.2d 604 (2006) · No. No. 171PA05 · Decided April 7, 2006

SUMMARY

The Supreme Court of North Carolina held that an indictment for felonious breaking or entering need not specifically allege the felony the defendant intended to commit. However, when an indictment does specify the intended felony, the State may not later amend that allegation because doing so can substantially alter the charge and prejudice the defendant. The court overruled State v. Vick to the extent inconsistent with this holding and affirmed the remedy of entering judgment for misdemeanor breaking or entering.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Brady, Justice
JURISDICTION	North Carolina
DECIDED	April 7, 2006
DOCKET	No. 171PA05
DISPOSITION	affirmed
PROCEDURAL POSTURE	The State appealed to the Supreme Court of North Carolina after the Court of Appeals arrested defendant's judgment for felonious breaking or entering and remanded for entry of judgment on misdemeanor breaking or entering. The State also challenged the Court of Appeals' reasoning concerning the indictment amendment.
STANDARD OF REVIEW	De novo review of the legal sufficiency and permissible amendment of the indictment under N.C.G.S. § 15A-923(e), including whether the amendment substantially altered the charged offense and prejudiced defendant.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of North Carolina
PARTIES	State of North Carolina v. James Emanuel Silas

TOPICS

criminal procedure

statutory interpretation

appellate procedure

preservation of error

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

QUESTIONS PRESENTED

1. Whether an indictment for felonious breaking or entering must specifically allege the felony the defendant intended to commit inside the building.
2. Whether, when an indictment specifically alleges an intended felony, the State may orally amend that allegation after the close of the evidence to substitute a different felony.
3. Whether the amendment prejudiced defendant and required entry of judgment for misdemeanor rather than felonious breaking or entering.

HOLDINGS

1. An indictment for felonious breaking or entering need not specifically identify the felony intended to be committed inside the building; it is sufficient to allege that the defendant intended to commit a felony or larceny therein, along with the other required elements.
2. When an indictment for felonious breaking or entering specifically alleges the intended felony, the State may not amend that allegation to substitute a different intended felony because the amendment substantially alters the indictment and is prohibited by N.C.G.S. § 15A-923(e).
3. Because the indictment properly charged misdemeanor breaking or entering but the amendment could not support the felonious offense, the proper remedy was to affirm the arrest of judgment on the felony conviction and remand for entry of judgment on misdemeanor breaking or entering.

KEY QUOTATIONS

“There is no requirement that an indictment for felonious breaking or entering contain specific allegations of the intended felony; only a general averment that defendant intended to commit a felony upon breaking or entering is required.” (608)

“However, if an indictment does specifically allege the intended felony, N.C.G.S. § 15A-923(e) mandates such allegations may not be amended.” (608)

FACTUAL BACKGROUND

After becoming angry with his estranged wife, defendant went to her apartment, forced open a latched door, and shot her twice. He later fired repeatedly at Jasper Herriott and into Herriott's occupied apartment. The original indictment charged felonious breaking or entering with intent to commit murder, but after the evidence closed the State orally amended it to identify assault offenses as the intended felony. Defendant had prepared his defense on the theory that the State would have to prove an intent to commit murder.

PROCEDURAL HISTORY

A jury convicted defendant of multiple offenses, including felonious breaking or entering. During the charge conference, after the close of the evidence, the trial court permitted the State to orally amend the indictment by changing the specifically alleged intended felony from murder to assault offenses. The Court of Appeals arrested judgment on the felonious breaking or entering conviction and remanded for entry of judgment on misdemeanor breaking or entering, while also remanding for resentencing on a separate prior-record-level issue. The Supreme Court did not review the sentencing issue because the State did not seek review of it, but it modified and affirmed the Court of Appeals' decision on the indictment issue.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

On remand, the trial court shall enter judgment on misdemeanor breaking or entering rather than felonious breaking or entering. The separate remand for resentencing based on the prior-record-level issue remained undisturbed.

CASES CITED

- State v. Snyder, 343 N.C. 61, 65, 468 S.E.2d 221, 224 (1996)
- State v. Hunt, 357 N.C. 257, 267, 582 S.E.2d 593, 600 (2003), cert. denied, 539 U.S. 985 (2003)
- State v. Greer, 238 N.C. 325, 327, 77 S.E.2d 917, 919 (1953)
- Apprendi v. New Jersey, 530 U.S. 466, 478-79, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)
- State v. Vick, 70 N.C. App. 338, 319 S.E.2d 327 (1984)
- State v. Worsley, 336 N.C. 268, 279-81, 443 S.E.2d 68, 73-74 (1994)
- State v. Faircloth, 297 N.C. 388, 255 S.E.2d 366 (1979)
- State v. Allen, 186 N.C. 302, 119 S.E. 504 (1923)
- State v. Freeman, 314 N.C. 432, 436-37, 333 S.E.2d 743, 745-46 (1985)
- State v. Wilkinson, 344 N.C. 198, 222, 474 S.E.2d 375, 388 (1996)