

ASSAULT:

The shooting and the subsequent striking over the head with a deadly weapon constitutes two separate offenses.

May 3, 1950



Honorable Homer F. Williams
Prosecuting Attorney
Bollinger County
Marble Hill, Missouri

Dear Sir:

This department is in receipt of your recent request for an official opinion. You thus state your request:

"Recently a case occurred in this county in which a resident of the county shot his neighbor in the leg with a shot gun inflicting a very severe wound in the leg. Shortly thereafter a nearby witness came up to the scene of the shooting, and at that time the party who did the shooting was striking the wounded man with his fists and abusing him by cursing him, and the wounded man was lying helpless in the roadside.

"The witness prevailed upon him to desist and then went about one quarter of a mile away to get help.

"While he was absent and before he returned with help, the defendant struck the wounded man over the head with the gun, making a bad wound upon his head, and the witness knows that the wound was not on the head when he went to get help, and the wounded man was helpless in the road all this time.

Hon. Homer F. Williams

"In your opinion would the shooting and the striking over the head with the gun, constitute one offense, so that it could be charged in one county or would it be duplicious to charge it in one count and would it constitute two separate offenses or can I charge it in one count?"

In the above circumstances there are two distinct offenses. The first was the shooting. After the shooting an appreciable time had elapsed before the assault was made by striking upon the head with the gun.

Section 4408, R. S. Mo. 1939, states:

"Every person who shall, on purpose and of malice aforethought, shoot at or stab another, or assault or beat another with a deadly weapon, or by any other means or force likely to produce death or great bodily harm, with intent to kill, maim, ravish or rob such person, or in the attempt to commit any burglary or other felony, or in resisting the execution of legal process, shall be punished by imprisonment in the penitentiary not less than two years."

In the case of State v. Harris, 209 Mo. 423, 1. c. 435, the court quoted the above section and in its discussion stated:

"In State v. Bond, 191 Mo. 555, 1. c. 568, this same distinction is maintained between the clause in the statute which makes the shooting at or stabbing another offense, and an assault with a deadly weapon, another and distinct offense. See also State v. Webster, 77 Mo. 566; State v. Painter, 67 Mo. 84; State v. Wood, 124 Mo. 412; State v. Hoffman, 78 Mo. 256. * * *"

In Robinson v. U. S. 143 Fed. (2d) 276, 1. c. 277, it is stated:

"The same transaction may constitute separate and distinct crimes where it is susceptible of separation into parts, each of which in itself constitutes a completed offense. * * *"

Hon. Homer F. Williams

CONCLUSION

It is the conclusion of this department that the shooting and striking over the head with the gun constitute two separate offenses, which may be charged in two informations or in two counts of one information.

Respectfully submitted,

HUGH P. WILLIAMSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General