REPORTS

OF

CASES AT LAW

ARGUED AND DETERMINED IN

THE SUPREME COURT

OF

NORTH CAROLINA

From December Term, 1842, to June Term, 1843, both inclusive.

BY JAMES IREDELL.

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1843.

STATE *vs.* ROBERT S. HUNTLY.

June 1843

The offence of riding or going armed with unusual and dangerous weapons, to the terror of the people, is an offence at common law, and is indictable in this State.

A man may carry a gun for any lawful purpose of business or amusement, but he cannot go about with that or any other dangerous weapon, to terrify and alarm, and in such manner as naturally will terrify and alarm, a peaceful people.

The declarations of the defendant are admissible in evidence, on the part of the prosecution, as accompanying, explaining, and characterizing the acts charged.

Appeal from the Superior Court of Law of Anson county, at Spring Term, 1843, his Honor Judge SETTLE presiding.

The defendant was tried upon the following indictment, found in Anson Superior Court:

The jurors for the State upon their oath present, that Robert S. Huntly, late of the county aforesaid, laborer, on the first day of September, in the present year, with force and arms, at and in the county aforesaid, did arm himself with pistols, guns, knives and other dangerous and unusual weapons, and, being so armed, did go forth and exhibit himself openly, both in the day time and in the night, to the good citizens of Anson aforesaid, and in the said highway and before the citizens aforesaid, did openly and publicly declare a purpose and intent, one James H. Ratcliff and other good citizens of the State, then and there being in the peace of God and of the State, to beat, wound, kill and murder, which said purpose and intent, the said Robert S. Huntley, so openly armed and exposed and declaring, then

and there had and entertained, by which said arming, exposure, exhibition and declarations of the said Robert S. Huntley, divers good citizens of the State were terrified, and the peace of the State endangered, to the evil example of all others in like cases offending, to the terror of the people, and against the peace and dignity of the State.

On the trial, it was insisted on the part of the defendant, that allowing all the facts charged in the indictment to be true, they constituted no offence for which the defendant could be punished as for a misdemeanor. His HONOR instructed the jury, that, if the facts charged in the indictment, were proven to their satisfaction, the defendant had been guilty of a violation of the law, and that they ought to render their verdict accordingly. In the investigation before the jury it appeared, among other things, that the defendant was seen by several witnesses, and on divers occasions, riding upon the public highway, and upon the premises of James H. Ratcliff, (the person named in the indictment,) armed with a double barrelled gun, and on some of those occasions was heard to declare, "that if James H. Ratcliff did not surrender his negroes, he would kill him," at others, "if James H. Ratcliff did not give him his rights, he would kill him;" on some, that "he had way laid the house of James H. Ratcliff in the night about day.break, and if he had shewn himself he would have killed him, that he shewed himself once, but for too short a time to enable him to do so, and that he mistook another man for him, and was very near shooting him." On one occasion, that "he would kill James H. Ratcliff if he did not surrender his negroes, and that as for William Ratcliff, he was good for him any how on sight, that there were four or five men whom he meant to kill." All these declarations were objected to by the defendant's counsel, but were received by the court, as accompanying and qualifying and explaining the defendant's riding about the county armed with a double barrelled gun.—The jury having found the defendant guilty, his counsel moved for a new trial upon the grounds, *first*, that the declarations of the defendant before mentioned, were improper-

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ly received; *secondly*, because the judge should have told the jury, that supposing all the facts charged in the indictment to be true, still the defendant was entitled to their verdict. The motion was overruled, and judgment having been pronounced, the defendant appealed.

Attorney General for the State.

Winston for the defendant.

GASTON, J. On the trial it was insisted by the defendant's counsel, and the judge was required so to instruct the jury, that if the facts charged in the indictment were all true, they nevertheless constituted in law no offence of which they could find the defendant guilty. His HONOR refused this prayer, and instructed the jury, that, if the facts charged were proved to their satisfaction, it was their duty to find him guilty. The same ground of defence has been taken here by way of a motion in arrest of judgment; but we are of opinion that in whatever form presented, it is not tenable.

The argument is, that the offence of riding or going about armed with unusual and dangerous weapons, to the terror of the people, was *created* by the statute of Northampton, 2nd Edward the 3d, ch. 3d, and that, whether this statute was or was not formerly in force in this State, it certainly has not been since the first of January, 1838, at which day it is declared in the Revised Statutes, (ch. 1st, sect. 2,) that the statutes of England or Great Britain shall cease to be of force and effect here. We have been accustomed to believe, that the statute referred to did not *create* this offence, but provided only special penalties and modes of proceeding for its more effectual suppression, and of the correctness of this belief we can see no reason to doubt. All the elementary writers, who give us any information on the subject, concur in this representation, nor is there to be found in them, as far as we are aware of, a *dictum* or intimation to the contrary. Blackstone states, that "the offence of riding or going armed with dangerous or unusual weapons, is a

crime against the public peace, by terrifying the good people of the land; and is *particularly* prohibited by the statute of Northampton, 2 Edward 3d, ch. 3d, upon pain of forfeiture of the arms, and imprisonment during the King's pleasure." 4 Bl. Com. 149. Hawkins, treating of offences against the public peace under the head of "Affrays," pointedly remarks, "but granting that no *bare words* in judgment of law carry in them *so much terror as to amount to an affray*, yet it seems certain that in some cases there may be an affray, where there is no actual violence, as where a man arms himself with dangerous and unusual weapons in such a manner, as will naturally cause a terror to the people, *which is said to have been always an offence at common law* and *strictly* prohibited by many statutes." Haw. P. C. B. 1, ch. 28, sect. 1. Burns and Tomlyns inform us, that, this term "Affray," is derived from the French word "*effrayer*" to affright, and that *anciently it meant no more*, "as where persons appeared with armour or weapons not usually worn, to the terror of others." Burn's Verbo "Affray." Dier do. It was declared by the Chief Justice in *Sir John Knight's case*, that the statute of Northampton was made in affirmance of the common law. 3 Mod. Rep. 117. And this is manifestly the doctrine of Coke, as will be found on comparing his observations on the word "Affray," which he defines (3d Just. 158,) "a public offence to the terror of the King's subjects, and so called because it affrighteth and maketh men afraid, and is enquirable in a *leet* as a common nuisance," with his reference immediately thereafter to this statute, and his subsequent comments on it (3d Inst. 160,) where he cites a record of the 29th year of Edward 1st, shewing what had been considered the law *then*. Indeed, if those acts be deemed by the common law crimes and misdemeanors, which are in violation of the public rights and of the duties owing to the community in its social capacity, it is difficult to imagine any which more unequivocally deserve to be so considered than the acts charged upon this defendant. They attack directly that public order and sense of security, which it is one of the first objects of the com-

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mon law, and ought to be of the law of all regulated societies, to preserve inviolate—and they lead almost necessarily to actual violence. Nor can it for a moment be supposed, that such acts are less mischievous here or less the proper subjects of legal reprehension, than they were in the country of our ancestors. The bill of rights in this State secures to every man indeed, the right to "bear arms for the defence of the State." While it secures to him a *right* of which he cannot be deprived, it holds forth the *duty* in execution of which that right is to be exercised. If he employ those arms, which he ought to wield for the safety and protection of his country, to the annoyance and terror and danger of its citizens, he deserves but the severer condemnation for the abuse of the high privilege, with which he has been invested.

It was objected below, and the objection has been also urged here, that the court erred in admitting evidence of the declarations of the defendant, set forth in the case, because those, or some of them at least, were acknowledgments of a different offence from that charged. But these declarations were clearly proper, because they accompanied, explained, and characterized the very acts charged. They were not received at all as *admissions* either of the offence under trial, or any other offence. They were constituent parts of that offence.

It has been remarked, that a double-barrelled gun, or any other gun, cannot in this country come under the description of "unusual weapons," for there is scarcely a man in the community who does not own and occasionally use a gun of some sort. But we do not feel the force of this criticism. A gun is an "unusual weapon," wherewith to be armed and clad. No man amongst us carries it about with him, as one of his every day accoutrements—as a part of his dress—and never we trust will the day come when any deadly weapon will be worn or wielded in our peace loving and law-abiding State, as an appendage of manly equipment.—But although a gun is an "unusual weapon," it is to be remembered that the carrying of a gun *per se* constitutes no

offence. For any lawful purpose—either of business or amusement—the citizen is at perfect liberty to carry his gun. It is the wicked purpose—and the mischievous result—which essentially constitute the crime. He shall not carry about this or any other weapon of death to terrify and alarm, and in such manner as naturally will terrify and alarm, a peaceful people. June 1843 State v Huntly.

Oour opinion is, that there is no error in the sentence below. This decision will be certified to the Superior Court of Anson accordingly.

PER CURIAM, Ordered accordingly.