

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

NOVEMBER 1995 SESSION

STATE OF TENNESSEE, \* C.C.A. #02C01-9503-CC-00082  
APPELLEE, \* CARROLL COUNTY  
VS. \* Hon. C. Creed McGinley, Judge  
KASWASI EUGENE WILLIAMS, \* (First Degree Murder)  
APPELLANT. \*

**FILED**

**January 31, 1996**

**Cecil Crowson, Jr.**  
Appellate Court Clerk

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OPINION FILED: \_\_\_\_\_

AFFIRMED

William M. Barker, Judge

## OPINION

The appellant, Kaswasi Eugene Williams, was convicted of felony murder and sentenced to life imprisonment in the Department of Correction.<sup>1</sup> On appeal, he argues that the evidence was insufficient to support the jury's verdict.

The judgment is affirmed.

On February 25, 1994, Cathy Giles was working at Walker's Grocery and Sporting Goods store in Leach, Tennessee. The victim, Ronald Adams, was helping her. At approximately 3:00 p.m., a white male, later identified as Christopher Wilson, entered the store accompanied by a black male, later identified as Archie Montague. At the same time, Ms. Giles noticed the appellant in the parking lot pumping gasoline into a small, dark colored import car. Wilson asked whether the "old man" was present, an apparent reference to Giles' father who owned the store. Wilson produced a .357 magnum caliber revolver and asked to see several pair of gun grips that Ms. Giles believed were "obviously too small" for that revolver. Nonetheless, Wilson unloaded the weapon and began to remove the gun grips with a screwdriver.

The appellant walked into the store and approached the cash register. The victim told Ms. Giles that the appellant wanted to pay for the gasoline. As Ms. Giles walked toward the cash register, the appellant left the store without speaking or paying for the gasoline. Ms. Giles then heard a loud commotion behind the counter. She saw the victim and Montague "bouncing back and forth" in an apparent struggle. Montague fell and knocked over a knife and video display case. Ms. Giles then heard a gunshot, and Wilson told her, "bitch, get down."

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<sup>1</sup> The appellant was indicted with two codefendants, Christopher David Wilson and Archie Vaughn Montague, but was tried separately.

Ms. Giles obtained her handgun from under the counter and ran outside the store. She saw the appellant leaving in the car and she fired a shot in his direction. She then ran to a neighbor's house and said that the store was being robbed.<sup>2</sup> When Ms. Giles looked back toward the store, she saw Wilson and Montague running into a wooded area. She fired two shots at them and then went to check on the victim. She found that Adams was "hurt terribly bad," and she called for an ambulance. While she waited for assistance, she saw the appellant drive by the store at a slow speed blowing the horn; after passing by the store, the appellant turned around and again drove by the store blowing the horn.

Ms. Giles testified that she did not see Wilson put the grips back on his .357 revolver before the appellant walked in. She said that the entire encounter took two to three minutes. She did not see who fired the shot at the victim. The appellant never said a word and was outside the store before the commotion occurred or the shot was fired. Although no one had demanded any money or property, Ms. Giles believed a robbery was occurring when she heard the gunshot.

Sherry Ann Brown was working at Libby's Quick Stop across the road from Walker's Grocery and Sporting Goods store. At approximately 3:00 p.m., she heard a gunshot and saw Cathy Giles run out of the store and toward her neighbor's porch. Two men, one white and one black, followed Giles from the store and ran toward the road. The men ran back toward the store when Brown screamed. She then heard two more gunshots.

Richard Sawyers of the Huntingdon Police Department received a call at

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<sup>2</sup> The neighbor, Mae Goodrum, testified that Cathy Giles came to her front porch and "was scared to death." She told Goodrum that "someone has Ronnie held up in the store."

3:18 p.m. about a robbery with a possible shooting. He and another officer were the first law enforcement officials to arrive at the scene. They found Cathy Giles inside the store and also saw the victim lying on the floor in a pool of blood. The victim had no vital signs. Sawyers secured the area and then turned the matter over to David Bunn, an Investigator with the Carroll County Sheriff's Department.

Investigator Bunn arrived at the scene and learned that one suspect had driven off in the direction of Jackson, and that two other suspects had fled the area on foot. A search of the area was undertaken involving several other law enforcement units, a canine team, and a helicopter. A .357 magnum caliber revolver was recovered about 800 feet behind the store submerged in water. The weapon was later sent to the Tennessee Bureau of Investigation (T.B.I.) Crime Lab. While searching the area, Bunn received a report that the appellant had been stopped and taken into custody. The remaining two men, Wilson and Montague, were apprehended the next day. Twenty-eight days later, Wilson led law enforcement officials to a wooded area four miles from the scene where they found a .380 semi-automatic pistol. This weapon was also sent to the crime lab.

Trooper Ollie Parker of the Tennessee Highway Patrol testified that he received a report at 3:17 p.m. to be on the lookout for a car purportedly involved in an armed robbery. The description was given for a black male driver of a small, burgundy import car. Shortly thereafter, Parker saw a charcoal colored Audi cross double yellow lines on Highway 70; as he followed the Audi, it accelerated to between 70 and 75 miles per hour. Parker managed to stop the car, and he ordered the driver to get out and lie on the ground. The driver told Parker his name was "Saint Louis," but he was later identified as the appellant. Parker found several items inside the Audi including a billfold belonging to Christopher Wilson, a box of .380 caliber ammunition, a .380

caliber "clip" or magazine, and some cutoff nylon stockings. A Carroll County jailor, Michael Robinson, testified that nylon stocking pieces were also recovered from the appellant's coat pocket when he was booked. The items were later turned over to the T.B.I.

The T.B.I. Crime Scene Unit processed the scene of the crime for evidence of hair and clothing fibers, serology and body fluids, firearms, and latent fingerprints. Special Agent Brian Byrd videotaped the crime scene, which he described as in general disarray. A .38 caliber revolver was found on the counter top containing three fired rounds and three unfired rounds.<sup>3</sup> A damaged .380 caliber bullet was found near the victim's knee, and an unfired .380 caliber wadcutter bullet was also found near the victim. No spent shell casings were found in the store, nor were any blood spatter patterns found. Byrd also received the items recovered from the Audi, which included the nylon stockings with the legs cut off, a thermal camouflage mask, a box of .380 caliber wadcutter bullets, and a .380 caliber magazine.

Steve Scott, also a T.B.I. agent, testified about the firearms recovered from the scene. The .38 caliber revolver was recovered with three fired and three unfired rounds; tests showed that the fired rounds had been shot from that particular weapon. The .357 magnum caliber revolver found in the woods behind the store was loaded with five rounds and had one empty cylinder. The unfired wadcutter bullet near the victim was consistent with the type of ammunition in the .357 as well as with the ammunition later recovered from the Audi. The .380 semi automatic pistol found four miles from the scene had four rounds remaining in the clip. The deformed bullet found near the victim's knee was a .380 caliber bullet; tests revealed that it had been fired

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<sup>3</sup> This apparently was the pistol used by Cathy Giles, who had testified that she fired three shots in all.

from the .380 caliber semi-automatic weapon. The bullet was not tested for traces of blood.

Dr. O'Brien Clary Smith, assistant medical examiner for Shelby County and Chief Deputy medical examiner for West Tennessee, performed an autopsy on the victim on February 26, 1994. He determined that the victim had been struck in the back of the neck with a single shot from "close proximity." Based on the powder burns to the victim's skin, Dr. Smith estimated that the shot had been fired from closer than twelve inches but was not a contact wound. The bullet exited the victim in the front of his neck. The shot damaged the victim's spinal chord and vocal chords, causing paralysis and an inability to breathe.

According to Dr. Smith, the damage to the .380 caliber bullet found near the victim would not have been caused by passing through the victim's body because the bones in the neck area are not sufficiently hard to cause that degree of damage. Dr. Smith said that the deformity may have occurred after the bullet exited the victim, by striking a hard surface such as the concrete floor of the store. Although a bullet passing through the body would have traces of blood and tissue on it, tests were not performed to determine whether this was the precise bullet that struck the victim.<sup>4</sup>

The appellant was advised of his Miranda rights by T.B.I. Investigator Thomas L. Lewis, and he signed a written waiver of those rights. The appellant told Lewis that he did not know the names of the two men he was with at Walker's store; he referred to them only as "Too-Tall" and "White Boy." He had known "Too-Tall" for only six months. The three men had stopped at the store for gasoline. When the appellant

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<sup>4</sup> Nonetheless, the State's theory was clearly that one shot had been fired inside the store and that this .380 caliber bullet was the one that killed the victim.

went inside to pay for the gasoline, he saw "Too-Tall" fighting with the victim. The appellant told Cathy Giles they were fighting and he ran out the door. He admitted leaving the scene in the car and then returning "to see what they [were] doing." He denied blowing the horn as he drove by. The appellant said that he did not know that the other two men were going to try to rob the store. The appellant was later shown Wilson's billfold, which had been found in the Audi, and he acknowledged that the driver's license photo of Wilson resembled the man he had known as "White Boy."

T.B.I. Investigator Leigh Browder also took statements from the appellant after reiterating the Miranda warnings. The appellant told Browder that he did not know a robbery was going to occur. Wilson went into the store first, followed by "Too-Tall" (by then identified as Montague). The appellant entered the store to pay for gasoline, and he was handing money to Cathy Giles when he saw the victim fall backwards; he did not hear any gunshots. He told Giles that there was a fight and he ran toward the car; as he did, Giles shot at him once and he fled from the scene. The appellant gave a second statement to Browder just after midnight. He said that he knew Montague had a .380 semi-automatic pistol in his possession and that Wilson had a "blue steel pistol with a brown handle." The appellant maintained that he had no knowledge that a robbery attempt was planned.

The prosecution also introduced a portion of the appellant's former testimony from the separate criminal trial against Montague. In that trial, the appellant testified that he had known Montague for five to ten years, and that he had met Wilson three days before the offense. On the morning of the offense, Wilson wanted to sell the .380 caliber semi-automatic pistol to Montague. The three men drove around in Wilson's car discussing the sale of the gun. They stopped at Walker's Grocery and Sporting Goods to buy gasoline. The appellant pumped the gas while Wilson and

Montague went inside. The appellant knew that Montague had the loaded .380, and that Wilson also had a gun. When the appellant went into the store to pay for the fuel, he "heard noise" and saw that the victim and Montague were fighting. He left the store and drove off because Giles was shooting at him. He said that he did not know that Wilson and Montague planned to rob the store.

The defense called Buck Gately, an Investigator with the Carroll County Sheriff's Department, to testify. Gately said that a statement was taken from the appellant on the day after the offense at 11:45 a.m.<sup>5</sup> The defense also called Leigh Browder to testify. Browder testified that the Audi driven by the appellant was registered to West Main Motors in Jackson. She also said that the nylon stockings found in the appellant's coat pocket were not analyzed for hair samples, and that the camouflage mask was not tested for fingerprints. She admitted that no spent shell casings were found at the scene, and that the .380 caliber bullet was not tested for blood. She reiterated, however, that the evidence showed that only one shot was fired inside of the store.

On appeal, the appellant claims that the evidence was insufficient to support the jury's verdict. The standard for review by an appellate court is whether, after considering the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 318-19 (1979); State v. Duncan, 698 S.W.2d 63, 67 (Tenn. 1985); Tenn. R. App. P. 13(e). The State is entitled to the strongest legitimate view of the evidence and to all reasonable and legitimate inferences that may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 836 (Tenn. 1978). In determining the sufficiency of the evidence, we do not reweigh the

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<sup>5</sup> The content of this statement was apparently excluded by the trial judge.



evidence, id., nor do we substitute our inferences for those drawn by the trier of fact from the evidence. Liakas v. State, 199 Tenn. 298, 305, 286 S.W.2d 856, 859 (1956).

The appellant was charged with the form of first degree murder commonly referred to as felony murder. At the time of the offense, felony murder was "a reckless killing of another committed in the perpetration of, or attempt to perpetrate any first degree murder, arson, rape, robbery, burglary, theft, kidnapping or aircraft piracy...." Tenn. Code Ann. §39-13-202(a)(2)(1991 Repl.). Here, the indictment alleged that the underlying felony was an attempted robbery. Robbery is the "intentional or knowing theft of property from the person of another by violence or putting the person in fear." Tenn. Code Ann. §39-13-401(a) (1991 Repl.). A criminal attempt occurs when a person acting with the culpability required for an offense:

- (1) Intentionally engages in action or causes a result that would constitute an offense if the circumstances surrounding the conduct were as the person believes them to be;
- (2) Acts with intent to cause a result that is an element of the offense, and believes the conduct will cause the result without further conduct on the person's part; or
- (3) Acts with intent to complete a course of action or cause a result that would constitute the offense, under the circumstances surrounding the conduct as the person believes them to be, and the conduct constitutes a substantial step toward the commission of the offense.

Tenn. Code Ann. §39-12-101(a)(1)-(3)(1991 Repl.).

The appellant claims that he entered the store only to pay for gasoline and that he did not participate in the attempted robbery committed by Wilson and Montague. The appellant's culpability, however, was based on principles of criminal responsibility:

A person is criminally responsible for an offense committed by the conduct of another if:

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(2) Acting with intent to promote or assist the commission of the offense, or to benefit in the proceeds or results of the offense, the person solicits, directs, aids, or attempts to aid another person to commit the offense....

Tenn. Code Ann. §39-11-402(2)(1991 Repl.)(emphasis added). Thus, provided the appellant had the culpable mental state, he was criminally responsible for the actions of his codefendants. In this regard, the appellant argues that there was no evidence that he intended or knew that the attempted robbery would occur or that he intended to promote or assist in its commission. We disagree.

The totality of the evidence supported a rational inference that a robbery had been planned and that all three men were in on it. The appellant, Wilson, and Montague drove around on the day of the offense for a period of time, eventually travelling from Jackson to Leach, Tennessee. They had a nylon stocking mask, a thermal camouflage mask, and loaded weapons in their possession. They stopped at Walker's Grocery and Sporting Goods store, and both Wilson and Montague went inside with the loaded weapons. The appellant knew both men were armed when they entered the store. As the appellant went inside, Montague got into an altercation with the victim; as the appellant left, a shot was fired. Wilson told Cathy Giles to get on the floor, but she obtained a gun, ran outside, and told a neighbor that a robbery was occurring. The appellant left the scene but returned moments later to drive by and blow the horn in search of his two companions. The appellant was apprehended when speeding away from a state trooper; thereafter, he made a number of conflicting statements about his knowledge of Wilson and Montague, their possession of loaded weapons, and the events that transpired in the store.

As noted, we do not reweigh the evidence, nor do we evaluate the credibility of the witnesses; instead, such functions are reserved for the trier of fact.

Our review of the evidence in the record leads us to conclude that a rational trier of fact could have found all of the essential elements of the crime beyond a reasonable doubt. Tenn. R. App. P. 13(e).

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William M. Barker, Judge

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Paul G. Summers, Judge

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David H. Welles, Judge