

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

MAY 1996 SESSION

FILED

December 23, 1996

**Cecil W. Crowson
Appellate Court Clerk**

STATE OF TENNESSEE,

Appellee,

VS.

LANDON ROBERTS,

Appellant.

*
*
*
*
*

C.C.A. # 01C01-9506-CC-00203

JACKSON COUNTY

Hon. J. O. Bond, Judge

(Involuntary Manslaughter)

For Appellant:

Lionel R. Barrett, Jr.
Washington Square Two, Ste. 417
222 Second Avenue, North
Nashville, TN 37201

For Appellee:

Charles W. Burson
Attorney General & Reporter

Christina S. Shevalier
Assistant Attorney General
450 James Robertson Parkway
Nashville, TN 37243-0493

Tom P. Thompson, Jr.
District Attorney General

John Wootten
Asst. District Attorney General
203 Greentop Street
P.O. Box 178
Hartsville, TN 37074-0888

OPINION FILED: _____

AFFIRMED

GARY R. WADE, JUDGE

OPINION

The defendant, Landon Roberts, was convicted of involuntary manslaughter. See Tenn. Code Ann. § 39-2-221 (repealed 1989). The trial court imposed a two-year sentence, with one year to be served in the county jail and the remainder suspended. The sole issue on appeal is whether the evidence is sufficient to support the conviction. We conclude that it is.

Jackson County Sheriff Wayne Mahaney testified that in early August of 1988, he was notified that Terry Wayne Pryor had been missing. A few days later, Sheriff Mahaney discovered the victim's body floating in a backwater area of the Cumberland River. The sheriff, who called in the Tennessee Bureau of Investigation for assistance, determined that the victim was last seen with the defendant and Marcel Young.¹ The defendant turned himself and a .38 caliber pistol over to the authorities.

Donn Clark of the TBI taped a statement by the defendant. The content of the tape established that around 10:00 p.m. on August 3, Young asked the defendant if he would drive him to Livingston, Tennessee, to purchase cocaine. On the way to Livingston, the two stopped at a bar and joined the victim. The three men then left the first bar and went to another bar where Young purchased some cocaine. When Young returned to the car, all three shared the cocaine. They left the bar for a time but returned two more times that night.

At around 1:00 or 2:00 a.m., the three began their return trip to Gainesboro, stopping along the way at Young's residence to pick up two .22 caliber

¹Marcel Young pled guilty to second degree murder for his role in the killing of the victim.

rifles and a .38 caliber pistol. At some point, one of the guns discharged, injuring the victim in the left leg. Young and the defendant promised the victim they would take him to be treated. When they arrived at the hospital, however, Young made a phone call to try to secure another purchase of cocaine instead of seeking help for the victim. After the call, Young and the defendant left with the victim to go purchase more cocaine.

Along the way, Young, according to the account provided by the defendant, pushed the victim over the bridge into the water. The defendant claimed that he heard several shots fired and then saw Young sling a gun into the water. Afterward, Young and the defendant cleaned the car out.

The next day, the defendant went to the residence of Mike Lynch. The defendant, admitting that he and Young had killed someone, told Lynch that he was very depressed and wanted a gun so he could kill himself. On that same day, Harry Stafford overheard Young and the defendant say, "We killed a guy." The defendant told Stafford that "they" shot the victim four or five times.

Tommy Heflin, who works for the TBI in the firearms identification section, testified that the bullets that killed the victim were fired from the .22 gauge rifle that police were able to recover. Dr. Greta Harlan, who performed the autopsy, testified that five separate gunshot wounds had caused the death; that the victim's blood alcohol level was 0.26; and that traces of cocaine and Valium were found in his urine.

The defendant testified in his own behalf. While his testimony was largely consistent with his pretrial statement, he claimed that after Young shot the

victim, he ordered the defendant to fire. The defendant acknowledged that he did fire the .38 caliber weapon toward the water one time but refused to shoot again. He insisted he fired the weapon due to his fear of Young.

On appeal, the state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which might be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). The credibility of the witnesses, the weight to be given their testimony, and the reconciliation of conflicts in the proof are matters entrusted to the jury as triers of fact. Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978). When the sufficiency of the evidence is challenged, the relevant question is whether, after reviewing the evidence in the light most favorable to the state, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983), cert. denied, 465 U.S. 1073 (1984); Tenn. R. App. P. 13(e).

At the time the offense was committed, manslaughter was defined as follows:

Manslaughter is the unlawful killing of another without malice, either express or implied, which may be either voluntary upon a sudden heat, or involuntary, but in the commission of some unlawful act.

Tenn. Code Ann. § 39-2-221 (repealed 1989). Involuntary manslaughter has been defined in case law as an unintended death caused by “some act not strictly unlawful in itself but done in an unlawful manner and without due caution, [such] that death was the natural or probable result of such act.” State v. Ricker, 611 S.W.2d 835, 841 (Tenn. Crim. App. 1980). Based on the facts developed at trial, the jury could have found the act of firing shots at the victim was done “without due caution” and “death was the probable result.”

Next, we consider whether the evidence was sufficient to convict the defendant as an aider and abettor as defined by the statute preceding the adoption of the 1989 Act. The law governing aiding and abetting provided as follows:

All persons present, aiding and abetting, or ready and consenting to aid and abet, in any criminal offense, shall be deemed principal offenders, and punished as such.

Tenn. Code Ann. § 39-1-303 (repealed 1989). Clearly there was a reasonable basis for the jury's conclusion that the defendant was an aider and abettor. Firing the .38 caliber pistol, even if done at Young's command, qualified as assisting in the killing. That the defendant told others that "we killed a guy" implies active participation in the crime. Under prior law, a defendant who aided and abetted was deemed a "principal offender" and could be convicted of involuntary manslaughter.

Accordingly, the conviction is affirmed.

Gary R. Wade, Judge

CONCUR:

Joseph M. Tipton, Judge

William M. Barker, Judge