

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
June 17, 2003 Session

STATE OF TENNESSEE v. JAMES ALAN SHEPPARD

**Direct Appeal from the Criminal Court for Davidson County
No. 2001-T-316 Frank Clement, Jr., Judge**

No. M2002-01358-CCA-R3-CD - Filed August 22, 2003

A Davidson County jury convicted the Defendant for one felony count and one misdemeanor count of leaving the scene of an accident involving death or injury pursuant to Tennessee Code Annotated section 55-10-101(b)(1)-(2). The trial court sentenced the Defendant to an effective sentence of eighteen months with forty-five days to be served in the county jail and the remainder to be served on probation. The Defendant now appeals, arguing that the trial court erred by granting the State's motion to amend the indictment without the consent of the Defendant. After a review of the record, we conclude that the amendment was invalid. We therefore reverse the Defendant's felony conviction and remand the case to the trial court to enter the conviction as a misdemeanor.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Reversed
and Remanded**

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which THOMAS T. WOODALL and JOHN EVERETT WILLIAMS, JJ., joined.

David L. Raybin, Nashville, Tennessee (on appeal); and Edward M. Yarbrough, Nashville, Tennessee (on appeal and at trial), for the appellant, James Alan Sheppard.

Paul G. Summers, Attorney General and Reporter; Helena Walton Yarbrough, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; James D. Sledge and Tammy Haggard Mead, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

I. PROCEDURAL HISTORY

In the early hours of January 1, 2001, the Defendant was involved in a tragic traffic accident that resulted in the death of Trooper John G. Mann and in serious injuries to Charles Gray. A Davidson County Grand Jury indicted the Defendant for the following offenses: (1) reckless vehicular homicide; (2) aggravated assault; (3) leaving the scene of an accident causing death; and

(4) leaving the scene of an accident causing injury. The original indictment as to Count 3 reads as follows:

COUNT 3

THE GRAND JURORS of Davidson County, Tennessee, duly impaneled and sworn, upon their oath, present that:

JAMES ALAN SHEPPARD

on the 1st day of January, 2001, in Davidson County, Tennessee and before the finding of this indictment, was the driver of a motor vehicle, and was involved in an accident which resulted in the death of John G. Mann, and further charges that this accident occurred upon premises of a shopping center, trailer park, apartment complex, other premises generally frequented by the public at large, a street, alley or public road or highway of the State of Tennessee, and further charges that James Alan Sheppard unlawfully did leave the scene of the accident without first fulfilling the requirements of Tennessee Code Annotated, §§ 55-10-103, to wit: give his name, and address, and the registration number of the motor vehicle he was driving, and render reasonable assistance to any person injured in the accident, all in violation of Tennessee Code Annotated §§ 55-10-101, and against the peace and dignity of the State of Tennessee. (Emphasis added.)

In pre-trial proceedings, the Defendant notified the trial court that Count 3 of the indictment, as it was written, alleged a misdemeanor rather than a felony. Over the Defendant's objections, the court granted the State's oral motion to amend the indictment to include language required to allege the felony offense. Count 3 of the amended indictment reads as follows:

COUNT 3

THE GRAND JURORS of Davidson County, Tennessee, duly impaneled and sworn, upon their oath, present that:

JAMES ALAN SHEPPARD

on the 1st day of January, 2001, in Davidson County, Tennessee and before the finding of this indictment, was the driver of a motor vehicle, and was involved in an accident which resulted in the death of John G. Mann, and further charges that this accident occurred upon premises of a shopping center, trailer park, apartment complex, other premises generally frequented by the public at large, a street, alley or public road or highway of the State of Tennessee, and further charges that James Alan Sheppard unlawfully did leave the scene of the accident, when he knew or should reasonably have known that death resulted from the accident, without first fulfilling the requirements of Tennessee Code Annotated, Section 55-10-103, to wit: give his name, and address, and the registration number of the motor vehicle he was driving, and render reasonable assistance to any person injured in the accident, all in violation of Tennessee Code Annotated Section 55-10-101, and against the peace and dignity of the State of Tennessee. (Emphasis added to indicate amendment.)

At the close of the State's evidence, the trial court entered a judgment of acquittal as to Count 2, aggravated assault. The jury then found the Defendant not guilty on Count 1, reckless vehicular homicide, but found the Defendant guilty on both the felony and the misdemeanor counts of leaving the scene of an accident involving death or injury. The trial court sentenced the Defendant to eighteen months in the county jail for the felony conviction, but suspended all but forty-five days and ordered the Defendant to serve the remainder of the sentence on probation. The trial court also imposed a sentence of eleven months and twenty-nine days for the misdemeanor conviction in Count 4 and ordered that the Defendant serve seven days in the county jail concurrently with the forty-five day jail sentence imposed in Count 3.

II. ANALYSIS

The Defendant contends that the trial court erred by granting the State's motion to amend the indictment to include mens rea language that transformed the charge in Count 3 from a misdemeanor to a felony. Both the United States and Tennessee Constitutions require that an accused be sufficiently informed of the "nature and cause of the accusation." U.S. Const. amend. VI, § 14; Tenn. Const. art. I, § 10; see also State v. Hill, 954 S.W.2d 725, 726-27 (Tenn. 1997). These provisions have been interpreted to require that an indictment:

(1) provide notice to the accused of the offense charged; (2) provide the court with an adequate ground upon which a proper judgment may be entered; and (3) provide the defendant with protection against double jeopardy.

Wyatt v. State, 24 S.W.3d 319, 324 (Tenn. 2000); see also Hill, 954 S.W.2d at 727; State v. Byrd, 820 S.W.2d 739, 741 (Tenn. 1991).

Tennessee Code Annotated further requires that an indictment state the facts constituting the offense in an ordinary and concise language, without prolixity or repetition, in such a manner as to enable a person of common understanding to know what is intended, and with that degree of certainty which will enable the court, on conviction, to pronounce the proper judgment

Tenn. Code Ann. § 40-13-202. If a charge does not appear in the indictment and is not a lesser offense included in the indictment, a jury cannot legally convict the defendant of that charge. State v. Cleveland, 959 S.W.2d 548, 552 (Tenn 1997). The court may freely permit amendment to an indictment with the Defendant's consent. Tenn. R. Crim. P. 7(b). Without the Defendant's consent, however, the court may permit the amendment of the indictment before jeopardy attaches only if "no additional or different offense is thereby charged and no substantial rights of the defendant are thereby prejudiced." Id. Except by action of the grand jury, no amendment may broaden or change the charges in an indictment after the indictment has been returned. State v. Goodson, 77 S.W.3d 240, 244 (Tenn. Crim. App. 2001).

The Defendant was indicted and convicted pursuant to Tennessee Code Annotated section 55-10-101 which provides as follows:

(a) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible, but shall then forthwith return to and in every event shall

remain at the scene of the accident until the driver has fulfilled the requirements of §§ 55-10-103¹. Every such stop shall be made without obstructing traffic more than is necessary. The requirements herein apply to accidents occurring upon highways and the premises of any shopping center, trailer park or any apartment house complex, or any other premises which are generally frequented by the public at large.

(b)(1) A violation of subsection (a) is a Class A misdemeanor.

(2) It is a Class E felony for any person to fail to stop or to comply with the requirements of subsection (a) when such person knew or should reasonably have known that death resulted from the accident.

(c) The commissioner shall revoke the license or permit to drive and any nonresident operating privilege of the person convicted of a violation of this section.

Tenn. Code Ann. § 55-10-101.

The statute establishes leaving the scene of an accident involving death or bodily injury as a Class A misdemeanor. Id. § 55-10-101(b)(1). However, the additional mens rea element, “knowledge,” elevates the misdemeanor offense to a Class E felony. Id. § 55-10-101(b)(2).

The Grand Jury’s original indictment as to Count 3 did not include the mens rea element specified in Tennessee Code Annotated § 55-10-101(b)(2), and therefore the indictment only charged the Defendant with the misdemeanor identified in Tennessee Code Annotated § 55-10-101(b)(1). Despite the Defendant’s objections, the trial court granted the State’s request to amend the indictment to add the mens rea element, “knowingly.” The State inserted the language, “when he knew or should have known that death resulted from the accident,” into Count 3 of the indictment and thereby elevated the charge to a felony under Tennessee Code Annotated § 55-10-101(b)(2). Thus, the original indictment charged the Defendant with two misdemeanors under Tennessee Code Annotated § 55-10-101(b)(1), but a jury convicted the Defendant of one felony under subsection (b)(2) and one misdemeanor under subsection (b)(1). Because the State amended the indictment without the Defendant’s consent and because the amended indictment alleged a different and broader charge than the charge in the original indictment, the amendment was improper and invalid.

We note that, when confronted with the Defendant’s objection to the State’s proposed amendment to the indictment, the State had the option of immediately presenting evidence of the felony to the Davidson County Grand Jury. Assuming that the Grand Jury would have returned an indictment against the Defendant for the felony, the felony indictment could then have been easily consolidated for trial with the other offenses alleged in indictment 2001-T-316. The State chose to rely on the improperly amended indictment.

Since the jury convicted the Defendant of a felony which contains all the elements of the misdemeanor offense, the jury effectively found the Defendant guilty of the misdemeanor originally charged in Count 3 of the indictment. Therefore, we affirm the conviction in Count 3 as a violation by the Defendant of Tennessee Code Annotated § 55-10-101(b)(1), a misdemeanor.

¹Tennessee Code Annotated § 55-10-103 provides that the driver of a vehicle involved in an accident resulting in death, injury, or damage to a vehicle, has a duty to give information and render aid.

For the foregoing reasons, we REVERSE the judgment of the trial court and REMAND this case to the trial court for the entry of an amended judgment in Count 3 consistent with this opinion.

ROBERT W. WEDEMEYER, JUDGE