North Carolina v. Stimpson

279 N.C. 716 (1971) | Cited 9 times | Supreme Court of North Carolina | December 15, 1971

Defendant assigns as error (1) the court's failure to instruct the jury that they could return a verdict of guilty of involuntary manslaughter, and (2) the overruling of objections to the cross-examination of defendant, for purposes of impeachment, with reference to his having been indicted in a different case. Discussion will be confined to these assignments.

Manslaughter and involuntary manslaughter differ in degree of criminality. The differences involve the elements of each crime and the prescribed punishment for each.

Prior to the effective date (April 10, 1933) of Chapter 249, Public Laws of 1933, G.S. 14-18 provided that manslaughter, whether voluntary or involuntary, was punishable by imprisonment for not less than four months and not more than twenty years. The 1933 Act amended G.S. 14-18 by adding: "Provided, however, that in cases of involuntary manslaughter, the punishment' shall be in the discretion of the court, and the defendant may be fined or imprisoned, or both." "[T]he proviso was intended and designed to mitigate the punishment in cases of involuntary manslaughter, and to commit such punishment to the sound discretion of the trial judge." State v. Dunn, 208 N.C. 333, 335, 180 S.E. 708, 709 (1935).

In State v. Blackmon, 260 N.C. 352, 132 S.E.2d 880 (1963), it was held that a statute (G.S. 14-55) prescribing punishment "by fine or imprisonment in the State's prison, or both, in the discretion of the court," did not prescribe "specific punishment" within the meaning of that term as used in G.S. 14-2. On authority of Blackmon, it was held in State v. Adams, 266 N.C. 406, 146 S.E.2d 505 (1966), that the maximum lawful term of imprisonment for involuntary manslaughter is ten years.

The court instructed the jury they could return a verdict of guilty of murder in the second degree, or a verdict of guilty of manslaughter, or a verdict of not guilty. Clearly the court was referring solely to voluntary manslaughter. The charge contains no reference to involuntary manslaughter. The sentence imposed by the judgment was permissible only upon conviction for voluntary manslaughter.

The court properly instructed the jury that, if the State satisfied the jury beyond a reasonable doubt that defendant by the use of his pistol, a deadly weapon, intentionally shot and thereby killed Miss Lillie, the law would raise two presumptions, (1) that the killing was unlawful, and (2) that it was done with malice. State v. Barrow, 276 N.C. 381, 390, 172 S.E.2d 512, 518 (1970), and cases cited. The court did not instruct in the negative, that is, that these presumptions would not arise unless the State proved beyond a reasonable doubt that defendant intentionally shot Miss Lillie.

Defendant's testimony was explicit that he did not intentionally shoot Miss Lillie; that the discharge of his pistol was accidental. If the jury so found, there remained sufficient evidence

unfavorable to defendant to require instructions as to involuntary manslaughter and to support a verdict of guilty of involuntary manslaughter.

The following statement from State v. Hovis, 233 N.C. 359, 365, 64 S.E.2d 564, 567-68 (1951), quoted in State v. Foust, 258 N.C. 453, 458-59, 128 S.E.2d 889, 893 (1963), summarizes the legal principles applicable to the factual situation under consideration as follows:

". . . Where one engages in an unlawful and dangerous act, such as 'fooling with an old gun,' i.e., using a loaded pistol in a careless and reckless manner, or pointing it at another, and kills the other by accident, he would be guilty of an unlawful homicide or manslaughter. G.S. 14-34; S. v. Vines, 93 N.C. 493; S. v. Trollinger, 162 N.C. 618, 77 S.E. 957; S. v. Limerick, 146 N.C. 649, 61 S.E. 568.

"Involuntary manslaughter has been defined to be, 'Where death results unintentionally, so far as the defendant is concerned, from an unlawful act on his part not amounting to a felony, or from a lawful act negligently done.' [Citations.]"

At common law and under G.S. 14-18, "one who points a loaded gun at another, though without intention of discharging it, if the gun goes off accidentally and kills," commits manslaughter. State v. Coble, 177 N.C. 588, 591, 99 S.E. 339, 341 (1919); State v. Boldin, 227 N.C. 594, 42 S.E.2d 897 (1947).

Based on legal principles stated above, which are restated and applied in State v. Foust, supra, and in State v. Wrenn, ante, 676, 185 S.E.2d 129 (1971), we hold the evidence required the submission under appropriate instructions whether defendant was guilty of involuntary manslaughter.

As stated by Chief Justice Stacy in State v. DeGraffenreid, 223 N.C. 461, 463-64, 27 S.E.2d 130, 132 (1943): "[T]he defendant is entitled to have the different views presented to the jury, under a proper charge, and an error in respect of the lesser offense is not cured by a verdict convicting the defendant of a higher offense charged in the bill of indictment, for in such case it cannot be known whether the jury would have convicted of a lesser degree of the same crime if the different views, arising on the evidence, had been correctly presented by the trial

court." Accord, State v. Moore, 275 N.C. 198, 211-12, 166 S.E.2d 652, 661 (1969), and cases cited; State v. Wrenn, supra. The failure of the court to instruct the jury with reference to involuntary manslaughter and to submit to the jury whether defendant was guilty of involuntary manslaughter entitles defendant to a new trial.

Nothing stated herein is intended to affect defendant's contention that the circumstances under which he drew his pistol were such that this action was or appeared to be necessary to protect

himself from death or great bodily harm.

On cross-examination, the solicitor asked defendant if he had not been indicted for murder in New York State. Defendant's objection was overruled. Answering, defendant testified that he had been indicted for murder in New York State in 1964 but "wasn't found guilty" and "wasn't sentenced for it." Defendant's Assignment of Error No. 6 is based on his exception to the admission of this testimony.

The ruling of the trial judge was based on State v. Maslin, 195 N.C. 537, 143 S.E. 3 (1928), and decisions in accord with Maslin, which, in respect of the point now under consideration, have been overruled this day in State v. Williams, ante, 663, 185 S.E.2d 174 (1971), for reasons fully stated therein.

Defendant, on trial for murder, offered evidence and contended that the discharge of the pistol was accidental and not intentional. Under these circumstances, the admission of the testimony, for the purposes of impeachment, to the effect that he had been indicted in New York State in 1964 for murder was prejudicial.

For the reasons stated, defendant is entitled to a new trial; the case is remanded for trial to determine whether defendant be guilty of voluntary manslaughter, or guilty of involuntary manslaughter, or not guilty.

New trial.

Disposition

New trial.