1934

Crimes--Reckless Disregard in the Use of Firearms

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Recommended Citation
Available at: https://uknowledge.uky.edu/klj/vol22/iss4/12

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interpretation, exempt property that is now subject to taxation. The legal fundamentalist may insist that the courts are logic-machines, operating in a vacuum; but the realist is aware that the court should and does consider public policy as the background of its decisions.

ELEANOR DAWSON.

CRIMES—RECKLESS DISREGARD IN THE USE OF FIREARMS.—It is remarkable to note how varied and unsettled the law is as to reckless disregard in the use of firearms. Many jurisdictions hold that where the shooting is unintentional and accidental, no matter how grossly negligent and careless the act, the accused may only be convicted of either voluntary or involuntary manslaughter. Other jurisdictions, however, adopt the apparently harsher rule and hold the defendant for voluntary manslaughter or for murder. After a close perusal of both comparatively old cases and of more modern ones it appears impossible to tell in which direction the tendency lies. The writer believes that for the protection of society, the latter rule, which is also the more stringent one, should be applied in a majority of cases; that is, where a defendant has been found so regardless of human life as to kill another by the reckless use of firearms, and whose only defense is that the death was unintentional, he should be indicted and convicted on a charge of murder.

The hesitancy of courts to follow this rule is exemplified in an early Kentucky case. Sparks v. Com., 3 Bush 116 (1867). The accused while walking down a public street, deliberately fired his pistol over his shoulder, and the shot struck and killed another. The court recognizing the viciousness of the act rendered a verdict of manslaughter and said, "The acts of the accused manifest such recklessness and want of caution as to indicate not only an entire absence of every precaution to prevent the pistol from firing, but impresses the mind that he did recklessly and intentionally so fire it. If a man contrary to law and good order and public security, fires off a pistol in the streets of a town and death be the result, he must answer criminally for it." This could easily have been a verdict of murder, and in a neighboring jurisdiction only a few years later, such a verdict was reached. State v. Edwards, 71 Mo. 312 (1879). Defendant while in an intoxicated condition, fired a pistol into a crowd of people collected in a public park. There was a question as to defendant's intention to kill anyone in particular. The jury charge was, "Altho the jury may believe from the evidence that defendant fired into the crowd with no particular intention to kill, yet if he purposely and intentionally did shoot into the crowd with a revolver loaded with gunpowder and by reason of this shot the said deceased died, then you will find the defendant guilty of murder in the second degree." The court found there was no error in the charge. A much later Kentucky case held accused only guilty of manslaughter. Hawkins v. Com., 142 Ky. 188, 133 S. W. 1151 (1911).
It appeared from evidence in this case that the shooting was either reckless or accidental. Instructions asking for murder were refused and the court stated that defendant wasn't guilty of murder, but if defendant had killed deceased by reason of his recklessness in handling the gun, but without malice aforethought, he was actually guilty of voluntary manslaughter. Apparently the court felt that it could not in reason hold the accused guilty of murder where the act was only reckless and accidental. It appears that the learned judge failed to recognize the seriousness of the precedent he was leaning upon and was helping to build up. Attention is called to another Kentucky case decided a few years earlier than Hawkins v. Commonwealth. In Brown v. Com. 13 K. L. R. 372, 17 S. W. 220 (1891), the same factual set-up was present as in the last case. Defendant placed his greatest reliance on the fact that no malice could be found from the evidence. The judge refused to give a requested instruction on manslaughter but informed the jury that where the act is reckless and done without lawful excuse, the defendant is guilty of murder. It appears, then, that Kentucky has failed to take the dilemma by its horns but has remained on the fence of uncertainty in deciding its many cases of reckless disregard. Interspersed here and there however we find a few Kentucky courts taking the outright stand that such an atrocious act may amount to murder.

The question of intent in crimes of this character has been and is a perplexing problem. Courts have found difficulty in convicting of murder where the accused was only careless and negligent. The problem is nicely handled in the recent case of Haynes v. State, 88 Tex. Crim. Repts. 42, 224 S. W. 1100 (1920). Defendant was convicted of murder. There was some conflict in the evidence as to whether the killing was intentional or the result of a wanton and reckless use of a pistol. A request was made that if the jury found the defendant had no intent to shoot or kill deceased, they could in no event convict of murder. This request was refused and the court observed, "One may shoot recklessly into a crowd or a railway train, or in other ways so as to manifest an apparent intention to kill, in which event his offense is murder even tho there be no specific intent to cause the death of the party so killed."

A most interesting case is that of Banks v. Banks, 85 Tex. Crim. Rep. 162, 211 S. W. 217 (1919). The defendant with no particular malice toward anyone, shot at a moving freight train and killed a negro brakeman. The court upheld a verdict of murder and said: "One who deliberately uses a deadly weapon in such reckless manner as to evidence a heart devoid of social duty and fatally bent on mischief, cannot shield himself from the consequences of his act by disclaiming malice or intent to kill or injure. Malice may exist without former grudges or antecedent menaces. Intentional doing of any wrongful act in such manner and under such circumstances as that the death of a
human being may result is malice and murder is its name." The judge in this instance could have relied on some precedent for his unorthodox view; instead he struck out into the uncharted seas of personal opinion and rendered a wonderfully accurate decision without citing a single case in support of his views. **Lopez v. State,** 2 Tex. App. 204 (1877), presents such a strong case against the defendant that hardly any one would doubt the result. It appeared that defendant, while on horseback, had ridden around a tent in which an entertainment was going on, firing four or five shots into the tent from different points. One of the bullets struck and killed a person within. Defendant was convicted of murder in the second degree and on appeal this judgment was affirmed. **Brista v. State,** 126 Ark. 565, 191 S. W. 7 (1917), also strongly supports the contention that such reckless acts should be nothing less than murder. Here, the defendant with a number of other persons armed with pistols and shotguns, went to a house in search of a negro and on being refused admittance, shot through the door and walls and killed a young negro girl. Their willful reckless acts constituted murder.

A slightly different problem is presented where the defendant jokingly points a gun at another and pulls the trigger only intending to scare. Numberless cases are found where an innocent victim of such a prank has met his death. The argument against holding one for murder in such a case is that there is an entire lack of intent. However, in order to halt the ever increasing number of deaths from this source, is it not expedient that more stringent punishments be meted out to those who indulge in fun at the deadly expense of others? The courts are recognizing this danger and in several cases have rendered a verdict of murder. In **Holt v. State,** 89 Ga. 316, 15 S. E. 316 (1892), the defendant handled a pistol in a reckless manner, pointing and snapping it at several persons and then without provocation, deliberately pointed it at deceased and fired the shot causing his death. Here the court affirmed a verdict of murder although the defense claimed the shooting to be accidental. Another early case took a different view. **Siberry v. State,** 149 Ind. 684, 47 N. E. 458 (1897). Defendant picked up a revolver and pointed it at his wife and on her remarking that he could not scare her, he snapped the trigger three or four times, when it discharged causing her death. The court held the jury was warranted in returning a verdict of involuntary manslaughter. The court in **Josey v. State,** 137 Ga. 796, 74 S. E. 518 (1912), stated the better rule. Defendant was on trial for the murder of his wife and maintained the shooting was accidental. By the Penal Code of Georgia the pointing of a pistol at another is made a crime. The charge was, "If you believe defendant killed his wife without intending to kill her, but it was done in the commission of an unlawful act which in its consequences, naturally tends to destroy a human being, then the offense will be murder." This charge was held to be correct.
in a judgment affirming the verdict of murder. On this question Kentucky appears to hold the view that manslaughter is the proper verdict in such cases. Hun v. Com., 143 Ky. 143, 136 S. W. 144 (1911). Defendant had snapped a loaded revolver at another and on the fifth pull of the trigger it went off causing his death. The court gave a verdict of voluntary manslaughter. There was abundant ground for the verdict because death was caused by the defendant's reckless and grossly careless handling of the pistol with knowledge on his part that it was dangerous to life to so handle. Also Speaks v. Com., 149 Ky. 393, 149 S. W. 850 (1912).

The law as may be readily seen is entirely unsettled as to reckless disregard in the use of firearms. Even within the jurisdictions themselves no set rule has been followed. Apparently courts have not relied so much on precedent as on the circumstances of the particular case. This writer believes, however, that the trend is slowly approaching the point where a sentence of murder will be awarded in the more flagrant cases of reckless disregard and that the least severe sentences will be voluntary manslaughter. It is reasonable to say that whenever a case of this type comes before the court, the instructions should include both murder and voluntary manslaughter, leaving it in the jury's discretion as to which to impose upon the defendant.

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