

1 No. CR91-858

'93 APR -8 P2:26

2 Dept. No. 9

3 JUDICIAL CLERK
4 BY [Signature]
5 DEPUTY

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

DECISION AND ORDER

12 MARRITTE FUNCHES,

13 Defendant.

14 _____/

15 On March 24, 1992, the above-named defendant was
16 convicted by a jury of Murder of the First Degree and Being an
17 Ex-felon in Possession of a Firearm. This conviction resulted
18 from the March 27, 1991, shooting death of cab driver KEVIN
19 JONES at J.J.'s parking lot at 445 North Virginia Street in
20 Reno, Washoe County, Nevada. The same jury acquitted the
21 codefendant EDWARD "Bud" SHAFER.

22 On May 5, 1992, the defense filed a motion for a new
23 trial based on newly discovered evidence. After a presentation
24 of evidence and a hearing in this matter, this Court filed a
25 Decision and Order on June 4, 1992, denying said motion. A
26 second motion for a new trial based on newly discovered

1 evidence was filed on October 14, 1992, which resulted in a
2 second evidentiary hearing. Based on all of the evidence
3 presented this Court granted a new trial in an Order dated
4 November 23, 1992.

5 A motion to reconsider this Court's decision was filed
6 on December 8, 1992. Another evidentiary hearing was held but
7 a decision and order was not entered at that time due to the
8 defendant filing a Writ of Mandamus or Prohibition with the
9 Nevada Supreme Court challenging the jurisdiction of this Court
10 to hear such a matter. On February 12, 1993, the Nevada
11 Supreme Court denied the Petition finding that the defendant
12 had adequate remedies in the ordinary course of law. As a
13 result of the Order from the Nevada State Supreme Court this
14 Court held another hearing on March 12, 1993, to consider all
15 of the evidence presented and hear argument of counsel on the
16 State's motion to reconsider.

17 Considering all of the evidence presented at the
18 trial, as well as the post trial motions, the Court finds as
19 follows:

20 1. Defendant FUNCHES was unemployed and had made the
21 statement that he was "not going out like a sucker."

22 2. The gun that was used to murder KEVIN JONES was
23 purchased for the defendant the day prior to the shooting and
24 was recovered from the defendant's property at the time of his
25 arrest. The evidence presented at the trial proved
26 conclusively that this gun was the murder weapon.

1 3. When he was advised of the purchase of the gun for
2 defendant FUNCHES, LEARDIS TURNER, a roommate, stated that
3 "they went and bought that fool a gun."

4 4. Defendant FUNCHES was in the taxicab at the time of
5 the shooting and robbery. Not only did "BUD" SHAFER place
6 FUNCHES in the cab, but STEPHEN KINGSLEY testified to
7 information that he received from defendant FUNCHES concerning
8 the number of people seen leaving the cab and using his right
9 hand to shoot JONES even though he was left handed. The Court
10 has reviewed available media accounts of this case and has
11 discovered that neither of these facts were reported.

12 5. During the time FUNCHES gave a mirandized statement
13 to police he was deceptive concerning his involvement, but did
14 state that he had the gun in his possession from the day before
15 the robbery and murder until his arrest approximately one week
16 later and in fact other statements made by defendant FUNCHES
17 were proven false.

18 6. This Court also listened to the tape of the
19 interview of defendant FUNCHES and it was readily apparent that
20 the defendant was not the least bit concerned with who was
21 killed or when or why. This coupled with the demeanor of "BUD"
22 SHAFER, who was obviously a follower, leads to the conclusion
23 that defendant FUNCHES did not trust SHAFER with the gun
24 outside of his presence.

25 ///

26 ///

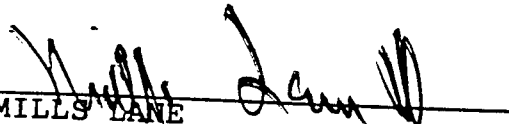
1 It is not necessary for the Court to find that
2 defendant FUNCHES actually shot KEVIN JONES since, if he was a
3 participant to the robbery, he would be equally culpable under
4 the felony Murder rule. NRS 200.030; cf. Septer v. Warden, 91
5 Nev. 84 (1975); see also Redmen v. State, 108 Nev. Adv. Op. 44
6 (1992). The Court finds that defendant FUNCHES was an active
7 participant in the robbery.

8 Based on all the facts and circumstances, the Court
9 finds that there is not a reasonable probability that a jury
10 would reach a different result upon retrial; such a finding
11 precludes the relief requested. Sanborn v. State, 107 Nev. 399
12 (1991).

13 Therefore, based on everything presented in this case,
14 as well as the applicable law, it is hereby ordered that the
15 Order granting a new trial should be, and the same, is hereby
16 REVERSED and the Decision and Order for new trial previously
17 filed in this matter is VACATED.

18 IT IS FURTHER ORDERED that the judgment of conviction
19 entered June 4, 1992, is hereby REINSTATED.

20 DATED this 9th day of April, 1993.

21
22
23 
24 MILLS LANE
25 DISTRICT JUDGE
26