

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
April 24, 2001 Session

**STATE OF TENNESSEE v. LINNELL RICHMOND
and SHERVON JOHNSON**

**Direct Appeal from the Criminal Court for Knox County
Nos. 58152A and 58152B Richard R. Baumgartner, Judge**

**No. E2000-01545-CCA-R3-CD
October 15, 2001**

Following a jury trial, a Knox County jury found the Defendants, Linnell Richmond and Shervon Johnson, guilty of aggravated robbery, attempted aggravated robbery and two counts of attempted first degree premeditated murder. Defendant Johnson was also convicted of the additional attempted aggravated robbery of Leonard Hill. The trial court sentenced Defendant Richmond to an effective sentence of twenty-two years for his convictions. Defendant Johnson was order to serve an effective sentence of seventy years for his convictions. The trial court further ordered that both Defendants serve their state sentences consecutively to a federal sentence arising out of the same situation and conduct as the state sentences. In this appeal as of right, the Defendants raise the following issues: 1) whether the evidence was sufficient to convict each Defendant of attempted first degree premeditated murder, attempted aggravated robbery and aggravated robbery; 2) whether the trial court erred in failing to instruct the jury on the natural and probable consequences rule; 3) whether the trial court erred in allowing the state to proceed under a theory of criminal responsibility against Defendant Richmond, when the indictment failed to charge him with criminal responsibility; 4) whether the trial court erred in failing to charge lesser-included offenses; 5) whether the trial court erred in failing to allow the victim, Mose Cuxart, to be impeached with false statements concerning his income tax returns; 6) whether the trial court erred in admitting photographs of Shannon Brown and Kevin Brown; 7) whether the trial court erred in amending the indictment for aggravated robbery; and 8) whether the trial court erred in ordering the Defendants' state sentence to run consecutively to their federal sentence. After a thorough review of the evidence and the applicable law, a majority of the panel affirms each of Defendant Johnson's convictions and sentences. A majority of the panel reverses and remands for a new trial Defendant Richmond's convictions for aggravated robbery, attempted aggravated robbery, and attempted murder.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court
Affirmed in Part and Reversed in Part; Remanded for a New Trial**

THOMAS T. WOODALL, J., delivered the opinion of the court on all issues except Defendant Richmond's issue regarding a charge of lesser-included offenses; JERRY L. SMITH, J., filed an opinion