Capital Defense Journal

Volume 6 | Issue 1 Article 15

Fall 9-1-1993

MURPHY v. COMMONWEALTH 246 Va. 136, 431 S.E.2d 48 (1993)

IV. Why did this disaster happen?

It is difficult to see a case like this without wondering why such a travesty occurred. The first possibility is ineffective assistance of counsel. The defense attorney made no objections to the pre-sentence report nor did he question the probation officer. He did not offer any evidence in mitigation.[21] Another explanation is that the defense attorney neither made objections nor presented evidence for fear of breaching his plea bargain agreement.[22]

V. Lessons

Defense attorneys will want to be very careful in the future not to plead guilty to capital murder without formal or strong informal assurance from a **judge** that the defendant will receive a sentence less than death. Still, it should be possible to achieve the goals of a Commonwealth/Dubois agreement if the Commonwealth is firm that it is offering no evidence of aggravating factors.[23]

Summary and analysis by:
Cameron P. Turner

[21] Defense counsel did raise Eighth Amendment objections in order to preserve the *Lankford* issue and other federal issues. The Supreme Court of Virginia said that these issues were defaulted because counsel did not argue them and did not move to withdraw the plea. It remains to be seen whether these issues were actually defaulted.

[22] *See Ricketts v. Adamson*, 483 U.S. 1 (1987) (holding that the state could seek death penalty in subsequent proceeding if the defendant breaches the plea agreement).

[23] *See, e.g. Beavers v. Commonwealth*, 245 Va. 268, 427 S.E.2d 411 (1993) (finding evidence of aggravating factor insufficient) and case summary of *Beavers*, Capital Defense Digest, this issue.

CHABROL v. COMMONWEALTH

245 Va. 327, 427 S.E.2d 374 (1993)

MURPHY v. COMMONWEALTH

246 Va. 136, 431 S.E.2d 48 (1993)

Supreme Court of Virginia

In 1993, the Supreme Court of Virginia examined two cases and offered guidelines about what arguments the Virginia courts will hear after a defendant has pled guilty to capital murder. This summary will examine each case individually and then attempt to draw broader implications from the aggregate of the two opinions.

FACTS AND HOLDINGS

I. *Chabrol v. Commonwealth*

Andrew J. Chabrol and his accomplice, Stanley Berkeley, abducted Melissa Harrington on her way to work. The victim was a married co-worker of Chabrol's to whom he had previously made sexual propositions. After tying her to a bed and repeatedly sexually assaulting her, Chabrol manually strangled Harrington, tied a rope around her neck, wrapped her face in duct tape and enveloped her head in a plastic bag. Medical testimony indicated that Harrington died as a result of the strangulation and suffocation. After police arrested Chabrol for the murder, they searched his personal belongings and found a computer disk and diaries that contained detailed entries of Chabrol's plans to murder Harrington. A search of Chabrol's home revealed two five-gallon containers of gasoline. Chabrol planned, according to the diary, to use the gasoline and powdered magnesium to burn Harrington's body at a temperature high enough to obliterate all traces of the body.

Chabrol pleaded guilty to capital murder. After the judge sentenced him to death, the defendant elected not to exercise his appeal of right. Virginia law, however, requires that "[a] sentence of death, upon the judgment thereon becoming final in the circuit court, shall be reviewed on the record by the Supreme Court."[1] This opinion is the result of that review. Virginia Code section 17-110.1 establishes the guidelines for the Supreme Court of Virginia's mandatory review of the sentence of death:

> The court shall consider and determine:
> 1. whether the sentence of death was imposed under the influence of passion, prejudice or any other arbitrary factor; and
> 2. whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.[2]

The court quickly dispensed with the first part of the review, stating that they found "no indication that the trial court's decision was affected by passion, prejudice or any other arbitrary factor."[3] The opinion also noted that Chabrol made no contentions to the contrary.

The court next addressed Chabrol's argument that the evidence did not support the trial court's vileness determination. The court first looked to the applicable Virginia statute which states that:

> [A] sentence of death shall not be imposed unless the court...shall (1) after consideration of the past criminal record of convictions of the defendant, find ... that his conduct in committing the offense for which he stands charged was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind or an aggravated battery to the victim; and (2) recommend that the penalty of death be imposed.[4]

[1] Va. Code Ann. § 17-110.1 (1990).

[2] Va. Code Ann. § 17-110.1(C) (1990).

[3] *Chabrol v. Commonwealth*, 245 Va. 327, 334, 427 S.E.2d 374, 377 (1993).

[4] Va. Code Ann. § 19.2-264.2 (1990).

The court then looked to its opinion in *Smith v. Commonwealth*,[5] where it had elaborated upon this vileness standard:

> We construe the words "depravity of mind" as used [in Virginia Code section 19.2-264.2] to mean a degree of moral turpitude and psychical debasement surpassing that inherent in the definition of ordinary legal malice and premeditation. Contextually, we construe the words "aggravated battery" to mean a battery which, qualitatively and quantitatively, is more culpable than the minimum necessary to accomplish an act of murder.[6]

The court then determined Chabrol's actions to be vile based on the "egregious, methodical manner in which Chabrol planned and executed these offenses."[7] Moreover, the court found that the defendant's lack of remorse supported the trial court's conclusion of vileness.[8] Finally, the court held that the defendant's torture of Harrington and the agonizing method of execution amounted to more than the minimal injury necessary to cause the victim's death.[9]

Chabrol also argued that his death sentence was disproportionate to the sentences given to others convicted of similar crimes. The Supreme Court of Virginia found Chabrol's case to be very similar to *Bunch v. Commonwealth*[10] and held that the death sentence was not excessive.[11] For all of these reasons, the court affirmed Chabrol's death sentence. Chabrol thereafter continued his refusal to pursue appellate review and has been executed.

II. *Murphy v. Commonwealth*

Mario Murphy agreed to kill James Radcliff in a murder-for-hire scheme. He originally agreed to perform the murder in a Virginia Beach shopping center, but the plan went awry when the victim never arrived. The person who hired him, Gary Hinojosa, next suggested that Murphy fake a burglary and kill James Radcliff during the burglary. Murphy enlisted the aid of two accomplices, Aaron Turner and James Hall, and the three entered the apartment where James Radcliff was asleep in his bedroom. Turner and Murphy struck the victim in the head with a metal pipe. Murphy stabbed the victim twice with a knife and Turner tried to slit the victim's throat. Hall continued hitting the victim with the pipe.

Murphy pled guilty to capital murder and the trial court imposed a sentence of death. In contrast to Chabrol, Murphy chose to appeal his sentence. Murphy contended originally that the Eighth, Sixth and Fourteenth Amendments to the United States Constitution prohibited the imposition of a death sentence. The Supreme Court of Virginia found that Murphy's guilty plea waived these issues and, therefore, refused to hear them on appeal.[12]

The court next examined Murphy's contention that the trial court did not consider his mitigation evidence. The court noted the trial judge's statements that he had been considering the case for two months and only needed half an hour to make his final decision. The court then cited *Corell v. Commonwealth*[13] for the proposition that "[t]he fact finder was not required to give controlling effect to the mitigating evidence."[14] For all of these reasons, the court concluded that the trial court had properly considered Murphy's mitigation evidence in fixing his sentence.[15]

The court also held that Murphy's conduct rose to the level of aggravated battery and that Murphy could be found to be dangerous to others in the future. Citing the definition of aggravated battery announced in *Smith*,[16] the court found that the evidence supported the trial court's finding that the battery to the victim was beyond what was needed to accomplish a homicide. Thus, the court was able to conclude that Murphy's actions met Virginia's test for vileness.[17] Murphy contended that his lack of a history of violence or of a felony record, along with his remorse and cooperation with the Virginia Criminal Justice System, undermined the trial court's finding of future dangerousness.[18] The Supreme Court of Virginia held that the "facts and circumstances surrounding the planned murder for hire of James [Radcliff] are sufficient to support the trial court's finding of future dangerousness."[19]

The court found that Murphy's punishment was not disproportionate even though his accomplices did not receive the death penalty.[20] In order to test the excessiveness of the sentence, the court looked to see if the perpetrators of comparable crimes had received death in that jurisdiction. After examining the records of these other cases, the court determined that Murphy's sentence was not disproportionate. The court held that nothing in the record suggested that the trial court imposed the sentence of death "under the influence of passion, prejudice or other arbitrary factors."[21]

ANALYSIS/APPLICATION IN VIRGINIA

These cases offer insight into what the Supreme Court of Virginia will consider following a defendant's plea of guilty to capital murder in the Commonwealth of Virginia. Moreover, they illustrate differences in the appellate process available to a defendant who appeals his death sentence and a defendant who chooses not to appeal. In *Murphy*, the defendant choosing to appeal was able to assign error to a wealth of issues that the defendant in *Chabrol* was not.

I. Pleading Guilty

Pleading guilty to any offense obviously waives numerous potential appellate claims. Because such pleas result in sentencing by a judge in capital cases, a guilty plea is particularly undesirable absent a formal (or strong informal) assurance that the sentence will be less than death.[22] Judicial sentencing presents a special danger because of the waiver of potential issues involving communication between the trial court and the jury.

A plea of guilty and refusal to appeal, as seen in *Chabrol*, waives all defects in the trial and sentencing and leaves only the limited scope of mandatory review prescribed by Virginia Code section 17-110. Contrary to the Supreme Court of Virginia's holding in *Murphy*, however, an admission of guilt of the offense does not admit to any more than the elements of the offense of capital murder and does not mean that the defendant acquiesces to any constitutional violations in the sentencing process.

---

5 219 Va. 455, 248 S.E.2d 135 (1978).
6 *Id.* at 478, 248 S.E.2d at 149.
7 *Chabrol*, 245 Va. at 334, 427 S.E.2d at 378.
8 *Id.*
9 *Id.*
10 225 Va. 423, 304 S.E.2d 271, *cert. denied*, 464 U.S. 977 (1983).
11 *Chabrol*, 245 Va. at 336, 427 S.E.2d at 379.
12 *Murphy v. Commonwealth*, 246 Va. 136, 141, 431 S.E.2d 48, 51 (1993).
13 232 Va. 454, 352 S.E.2d 352, *cert. denied*, 482 U.S. 931 (1987).
14 *Id.* at 468-69, 352 S.E.2d at 360.
15 *Murphy*, 246 Va. at 142, 431 S.E.2d at 51-52.
16 219 Va. at 478, 248 S.E.2d at 149.
17 *Murphy*, 246 Va. at 144, 431 S.E.2d at 54.
18 *Id.* at 144, 431 S.E.2d at 53.
19 *Id.* at 145, 431 S.E.2d at 53.
20 *Id.* at 146, 431 S.E.2d at 53.
21 *Id.* at 147, 431 S.E.2d at 55.

II. Vileness Factor

Although preferably addressed on appeal rather than on mandatory review, the issue of Virginia's application of its "vileness" factor remains suspect.[23] In *Smith v. Commonwealth*, the Virginia Supreme Court said that an "aggravated battery" was a battery "which qualitatively and quantitatively, is more culpable to accomplish an act of murder."[24]

The *Murphy* and *Chabrol* courts' use of this definition as a narrowing construction of the unconstitutionally vague statutory language[25] continues to be questionable. One construction might be more acceptable if the court concentrated on its interpreted requirement of a **qualitatively** more culpable battery rather than a purely **quantitative** approach. The qualitative method focuses on a heightened degree of individual culpability involved in the manner of the killing. The quantitative test is little more than a "one-shot, two-shot," rule that distinguishes arbitrarily between life and death.

In both of these cases the court looked to the quantitative standard. In *Murphy*, the court held "that the evidence was more than sufficient to support the trial court's finding that Murphy had committed a battery to the victim which was more than the minimum necessary to accomplish the act of murder."[26] In *Chabrol*, the court found that "...[s]uch conduct far exceeded the minimum battery necessary to accomplish an act of murder."[27]

III. Differences Between Mandatory Review and Appeal

The differences between appeal and mandatory review also suggest implications for the attorney - client relationship. Murphy was able to bring many more issues to the attention of the Supreme Court of Virginia than was Chabrol. Although Mr. Chabrol's attorney did everything possible to convince his client to appeal, his failure to do so underscores the paramount importance of developing a good relationship with the client at an early stage. The Virginia Code of Professional Responsibility requires the attorney to accept the decision of the client about pleas, but a close working relationship established early may help the client accept the advice of counsel at critical points in the case.[28] As it stands, we will never know whether Andrew Chabrol was executed under an unconstitutional application of Virginia's capital murder scheme.

Summary and analysis by:
Cameron P. Turner

---

[22] *See Dubois v. Commonwealth*, 435 S.E. 2d 636 (Va. 1993) and case summary of *Dubois*, Capital Defense Digest, this issue.

[23] *See Lago, Litigating the Vileness Factor*, Capital Defense Digest, Vol. 4, No. 1, p. 24 (1991).

[24] 219 Va. at 478, 248 S.E.2d at 149.

[25] *See Arave v. Creech*, 113 S. Ct. 2680 (1993), and case summary of *Arave*, Capital Defense Digest, this issue.

[26] *Murphy*, 246 Va. at 144, 431 S.E.2d at 52.

[27] *Chabrol*, 245 Va. at 334, 427 S.E.2d at 378. The *Chabrol* court also found that there had been psychological and physical torture. Had the court previously offered a definite construction of the statutory term, "torture," so that attorneys could defend against it, it would have been constitutionally acceptable. *See Lankford v. Idaho*, 111 S. Ct. 1723 (1991) and case summary of *Lankford*, Capital Defense Digest, Vol. 4, No. 1, p. 9 (1991); and *Dubois v. Commonwealth*, 435 S.E. 2d 636 (Va. 1993) and case summary of *Dubois*, Capital Defense Digest, this issue.

[28] Virginia Code of Professional Responsibility, EC 7-7.

PRESENTING MITIGATION AGAINST THE CLIENT'S WISHES: A MORAL OR PROFESSIONAL IMPERATIVE?

BY: SUSAN F. HENDERSON

I. INTRODUCTION

The number of Virginia capital defendants who oppose presentation of evidence in mitigation or who plead guilty, or both, appears to be increasing.[1] Instances involving capital defendants who offer little or no cooperation or who actually obstruct defense counsel in preparation and presentation of mitigation are less visible, but probably arise even more frequently. Examination of legal and ethical issues raised by these situations provides another important example of why "death is different."

The trial of a capital defendant is divided into two phases. At the first phase, a determination of guilt is made. If the defendant is found guilty, then a second separate proceeding follows to determine the sentence to be imposed. At the penalty trial, both the prosecution and the defense may present evidence as to the propriety of the imposition of a sentence of death. The prosecution will seek to prove and emphasize the existence of aggravating factors justifying the imposition of the death penalty. Conversely, the defense has the opportunity to present evidence of mitigating circumstances to persuade the jury to impose a life sentence.

If the defendant entered a guilty plea, the penalty phase may be the first and only opportunity the defense will have to educate the sentencer, whether judge or jury, about the defendant. Even if the defendant was found guilty of capital murder after a full trial, the penalty phase will provide the defense with an opportunity to focus the jury's attention on the defendant solely as a person.[2] Mitigation may include evidence about

---

[1] *See, e.g., DuBois v. Commonwealth*,435 S.E. 2d 636 (Va. 1993) and case summary of *DuBois*, Capital Defense Digest, this issue; *Murphy v. Commonwealth*, 246 Va. 136, 431 S.E.2d 48 (1993) and case summary of *Murphy*, Capital Defense Digest, this issue; *Chabrol v. Commonwealth*, 245 Va. 327, 427 S.E.2d 374 (1993) and case summary of *Chabrol*, Capital Defense Digest, this issue; *Davidson v. Commonwealth*, 244 Va. 129, 419 S.E.2d 656 (1992) and case summary of *Davidson*, Capital Defense Digest, Vol. 5, No. 1, p. 33 (1992).

[2] Defense counsel should, however, recognize that the defendant's demeanor during the guilt phase could adversely affect the jury's impressions **before** the penalty trial begins. *See, e.g., Riggins v. Nevada*, 112 S. Ct. 1810, 1819-20 (1992) (Kennedy, J., concurring) (citing Geimer & Amsterdam, *Why Jurors Vote Life or Death: Operative Factors in Ten Florida Death Penalty Cases*, 15 Am. J. Crim. L. 1, 51-53 (1987-1988)).