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Hopkins v. Reeves 118 S. Ct. 1895 (1998)

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I. Facts

On the morning of March 29, 1980, the police responded to an emergency call from the Religious Society of Friends meeting-house in Lincoln, Nebraska.[1] Janet Mesner ("Mesner") was found lying on the floor of the rear of the house, suffering from the infliction of seven stab wounds in her chest.[2] The partially nude dead body of Mesner's friend, Victoria Lamm ("Lamm"), was discovered in an upstairs bedroom.[3] The police retrieved a wallet, containing identification of the defendant, Randolph K. Reeves ("Reeves"), from near Lamm's body.[4] A pair of blood-soaked underwear with traces of semen, later linked to Reeves, was found lying in the middle of the bed.[5] A serrated knife with Mesner's blood on it was located in the kitchen.[6] When asked by the police if she knew who stabbed her, Mesner gave Reeves's name.[7] Before dying, Mesner also revealed to the police that the defendant had raped her.[8]

Reeves was charged with the first degree murder of Mesner and Lamm under the felony murder theory that Reeves killed Mesner in the perpetration of a sexual assault in the first degree.[9] At trial, Reeves requested that the jury be given instructions on murder in the second degree and manslaughter.[10] The trial court declined to do so, basing its denial on Nebraska precedent holding that

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1. Hopkins v. Reeves, 118 S. Ct. 1895, 1898 (1998).

2. *Reeves*, 118 S. Ct. at 1898. Mesner was the live-in caretaker for the Religious Society of Friends meeting-house. *Id.*

3. *Id.*

4. *Id.*

5. *Reeves*, 118 S. Ct. at 1898.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Reeves*, 118 S. Ct. at 1898. Nebraska's first degree murder statute reads in its entirety:

> A person commits murder in the first degree if he kills another person (1) purposely and with deliberate and premeditated malice, or (2) in the perpetration of or attempt to perpetrate any sexual assault in the first degree, arson, robbery, kidnapping, hijacking of any public or private means of transportation, or burglary, or (3) by administering poison or causing the same to be done; or if by willful and corrupt perjury or subornation of the same he purposely procures the conviction and execution of any innocent person. The determination of whether murder in the first degree shall be punished as a Class I or Class IA felony shall be made pursuant to sections 29-2520 to 25-2524.

NEB. REV. STAT. § 28-303 (1997).

10. *Reeves*, 118 S.Ct. at 1898.

second degree murder and manslaughter are not lesser included offenses of felony murder.[11] Following the jury's return of guilty verdicts for the first degree murder of both Mesner and Lamm, a three-judge sentencing panel weighed the aggravating and mitigating circumstances as required by Nebraska law and sentenced Reeves to death on both convictions.[12]

The Supreme Court of Nebraska affirmed Reeves's convictions and sentences.[13] The state court's denial of the defendant's petition for collateral relief was vacated by the United States Supreme Court for further consideration in light of *Clemons v. Mississippi*.[14] On remand, the Supreme Court of Nebraska reaffirmed the death sentence.[15] Reeves then filed a petition for a writ of habeas corpus in federal district court alleging, among other things, that under *Beck v. Alabama*[16] the trial court's failure to instruct the jury on second-degree murder and manslaughter was unconstitutional.[17] The District Court rejected this claim but granted relief on unrelated grounds.[18] When the United States Court of Appeals for the Eighth Circuit reversed and remanded on the unrelated issue,[19] the district court again granted the petition, finding a due process violation arising out of the Supreme Court of Nebraska's reaffirmation of Reeves's sentences.[20] On review, the court of appeals determined that the Nebraska trial court's failure to give the instructions on second-degree murder and manslaughter as requested by defense counsel resulted in constitutional error under *Beck*.[21] The state appealed this holding to the United States Supreme Court.

II. Holding

Justice Thomas delivered the majority opinion of the Court, holding that the analysis of *Beck v. Alabama* did not apply to *Reeves* because Nebraska state law

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11. *Id.*

12. *Id.* at 1898-99.

13. State v. Reeves, 344 N.W.2d 433 (Neb. 1984).

14. Reeves v. Nebraska, 498 U.S. 964 (1990) (citing Clemons v. Mississippi, 494 U.S. 738 (1990)). The case was remanded "because [Reeves's] death sentence had been based in part on an invalid aggravating factor." *Reeves*, 118 S. Ct. at 1899.

15. *Reeves*, 118 S. Ct. at 1899.

16. 447 U.S. 625 (1980).

17. *Reeves*, 118 S. Ct. at 1899. *Beck v. Alabama* held unconstitutional Alabama's statutory scheme requiring that the jury not be instructed as to the lesser included offenses of felony murder when the defendant was a capital defendant. The decision notes several factors that played a significant role in making this determination: the difference in treatment between capital and non-capital defendants; the pressure of the jury to make a decision between death and freedom; and the fact that, under Alabama law, second-degree murder and manslaughter are lesser included offenses of felony murder. *Beck v. Alabama*, 447 U.S. 625 (1980).

18. Reeves v. Hopkins, 871 F. Supp. 1182, 1202, 1205-06 (D. Neb. 1994).

19. Reeves v. Hopkins, 76 F.3d 1424, 1427-31 (8th Cir. 1996).

20. Reeves v. Hopkins, 928 F. Supp. 941, 959-65 (D. Neb. 1996).

21. Reeves v. Hopkins, 102 F.3d 977 (8th Cir. 1996).

does not identify second-degree murder and manslaughter as lesser included offenses of felony murder as a matter of law. Because the Eighth Circuit based its decision on the applicability of *Beck*, the Court reversed the judgment granting Reeves a conditional writ of habeas corpus.[22]

III. Analysis/Application in Virginia

A. Distinctions Drawn Between Reeves *and* Beck v. Alabama

The Court's decision turned on the difference between Nebraska state law, applicable to the case at bar, and Alabama state law, central to the *Beck* decision.[23] The Alabama law at issue in *Beck* acknowledged the non-capital, lesser included offense of felony murder but refused to apply the construction in capital cases, even where fairly raised by the evidence.[24] On the other hand, there is no statutory recognition of the lesser included offenses of second-degree murder and manslaughter under Nebraska felony murder law. Indeed, as noted in Justice Thomas' opinion, the state's high court "has held for over 100 years, in both capital and noncapital cases, that second-degree murder and manslaughter are not lesser included offenses of felony murder."[25] "Thus, *as a matter of law*, Nebraska prosecutors cannot obtain convictions for second-degree murder or manslaughter in a felony murder trial."[26] Absent state law identifying the inclusion of lesser included offenses under the definition of a crime, the Court reasoned that the due process clause does not require instruction as to these offenses.[27] Specifically, the Court found no prejudice directed toward the capital defendant as compared with the non-capital defendant charged with felony murder since, in Nebraska law and practice, *when lesser included offenses are identified for a crime*, both capital and non-capital defendants receive the lesser included offense instruction.[28]

The differences between the sentencing procedures of the two schemes also played a significant role in the Court's decision. Under Alabama law at the time *Beck* was decided, the jury imposed the defendant's sentence.[29] As a result of instructions excluding the lesser included offenses defined by state law, the jury would be left with the unappealing choice between taking the defendant's life or

22. Hopkins v. Reeves, 118 S. Ct. 1895, 1903 (1998).

23. *Id.* at 1900-03.

24. *Id.* at 1900.

25. *Id.*

26. *Reeves*, 118 S. Ct. at 1900 (emphasis in original).

27. *Id.* The Court noted that, were due process to require that the jury be instructed as to lesser included offenses *not* identified by state law, "[that] would be to allow [the defendant's] jury to find beyond a reasonable doubt elements that the State had not attempted to prove, and indeed that it had ignored during the course of trial." *Id.* at 1902.

28. *Id.* Under the *Beck* scenario, capital defendants did not receive lesser included offense instructions that were offered to *noncapital* defendants under the Alabama death penalty statute. *See Beck*, 447 U.S. at 628.

29. *Reeves*, 118 S. Ct. at 1900. Today, the jury gives an advisory sentence which the trial court considers but is not bound to follow. *See* ALA. CODE § 13A-5-46 (1998).

granting him his complete freedom if they found him guilty of some crime *other than the capital crime.*[30] By contrast, in Nebraska, the jury determines the guilt or innocence of the defendant, but the sentencing is left to the consideration of a three-judge sentencing panel.[31] This panel is not faced with a "freedom or death" choice, but, rather, a literal "life or death" choice.[32]

B. Enmund v. Florida[33] *Prerequisite of Intent Finding*

Under Nebraska law, felony murder requires only a killing, not a murder, in the commission of an enumerated felony.[34] Accordingly, there is no requirement of a culpable mental state with respect to the homicide; the killing could, in fact, be accidental. The United States Supreme Court has held that felony murder can be used to establish guilt of the most serious form of murder but a death sentence may not be imposed absent a finding that the defendant actually intended to kill or knew deadly force would be used in the commission of the crime.[35] The Court later modified this rule to provide that death was not a disproportionate sentence if the defendant was a major participant in a felony and acted with reckless disregard for human life.[36] The Court has also said that the jury need not make the culpability finding required by *Enmund v. Florida* and *Tison v. Arizona*; it is permissible for an appellate court to do so.[37] The *Reeves* majority relied on the assumption that this finding of culpability had previously been made. However, the Court failed to identify a point in the record where the *Cabana v. Bullock* finding had been made.

Significantly for Virginia practitioners, the exact issue raised in *Reeves* will not arise in Virginia practice because capital murder cannot be established under Virginia law through the felony murder rule. Every section of the Virginia capital murder statute requires that the homicide be "willful, deliberate and premeditated."[38] That very fact, however, is a reminder that second degree murder and involuntary manslaughter are lesser included offenses of capital murder in Virginia. Indeed, a homicide that would otherwise be murder may be reduced to voluntary manslaughter in some instances.[39]

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30. *Reeves*, 118 S. Ct. at 1900.

31. *Id.* at 1901.

32. *Id.* at 1901-02.

33. 458 U.S. 782 (1982).

34. *See infra* note 9 for specific language of the Nebraska capital murder statute.

35. Enmund v. Florida, 458 U.S. 782 (1982).

36. Tison v. Arizona, 481 U.S. 137, 158 (1987) (holding that "major participation in the felony committed, combined with reckless indifference to human life, is sufficient to satisfy the *Enmund* culpability requirement").

37. Cabana v. Bullock, 474 U.S. 376, 392 (1986) (stating that "the Eighth Amendment does not require that a jury make the findings required by *Enmund*").

38. VA. CODE ANN. § 18.2-31 (Michie 1998).

39. *See* Barrett v. Commonwealth, 341 S.E.2d 190 (Va. 1986) (sustaining conviction for

Thus, it is important not to overlook evidence that fairly raises the issue of lesser included offenses. Virginia law *requires* that in those instances juries be instructed on the lesser offenses. The Supreme Court of Virginia has held that, when supported by the evidence, a second degree murder instruction is appropriate.[40]

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unlawful wounding despite homicide); Moxley v. Commonwealth, 77 S.E.2d 389 (Va. 1953) (showing that although the defendant did not specifically argue that he shot the victim in the heat of passion, jury finding that circumstances justified self-defense claim sustained).

40. Buchanan v. Commonwealth, 384 S.E.2d 757, 769 (Va. 1989). The only limitation on this rule is that "the evidence asserted in support of such an instruction 'must amount to more than a scintilla.'" *Id.* (citations omitted).

CASE NOTES:

United States Court of Appeals, Fourth Circuit