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# Hedrick v. Commonwealth Nos. 98-2055, 98-2056, 1999 WL 101079 (Va. Feb. 26, 1999)

# Hedrick v. Commonwealth
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## *I. Facts*

On the evening of May 10, 1997, Brandon Wayne Hedrick ("Hedrick") and a companion, Trevor Jones ("Jones"), observed the victim, Lisa Yvonne Alexander Crider ("Crider"), walking along the roadside.[1] Jones informed the defendant that he believed Crider's boyfriend was a seller of crack cocaine. Hedrick and Jones determined that Crider probably had crack in her possession and decided to rob her and have sexual relations with her.[2] The three went to Jones's apartment where Jones and Hedrick "devised a plan in which Hedrick would pretend to rob both Jones and Crider."[3] Hedrick, with a shotgun in his hands, ordered Jones to empty Crider's pockets and put handcuffs on her. Jones pulled $50, cigarettes, and a cigarette lighter out of Crider's pockets, handcuffed her, taped her eyes and mouth with the duct tape and put a shirt over her head.[4]

The three then left the apartment in Jones's truck. While in the truck, Hedrick raped Crider.[5] Hedrick and Jones then discussed killing Crider and decided to do so. In an effort to save her life, Crider performed oral sodomy on Hedrick.[6]

Jones drove the truck to a back road by the James River.[7] Jones pulled off the road and Hedrick exited the passenger side of the truck with the shotgun. Jones then removed the handcuffs and rebound her hands, eyes and mouth with duct tape while Hedrick watched. Jones led Crider to the riverbank and turned to Hedrick and said, "do what you got to do."[8] At this point Jones began walking away. As he did so, he heard a single gunshot.[9]

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1. Hedrick v. Commonwealth, Nos. 98-2205, 98-2056, 1999 WL 101079, at *2 (Va. Feb. 26, 1999).
2. *Id.*, at *2.
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*

At trial, the Commonwealth's witnesses testified that several examinations revealed that Crider had been shot in the face with a shotgun. The shotgun wad was found deep in the cranial cavity indicating that the gun was fired from close range.[10]

Hedrick was indicted for capital murder in the commission of a robbery, forcible sodomy, and rape.[11] The jury found Hedrick guilty of capital murder. At the penalty phase of the capital murder trial, the jury sentenced Hedrick to death on a "finding that he represented a serious threat to society and that his offence was outrageously wantonly vile, horrible, or inhuman in that it involved torture, depravity of mind, or aggravated battery to the victim."[12]

## *II. Holding*

The Supreme Court of Virginia found no reversible error in the trial court's decision and affirmed the judgment.[13]

## *III. Analysis / Application in Virginia*

Hedrick raised several claims on appeal to the Supreme Court of Virginia.[14] The only claim requiring discussion and analysis is the contention that, since Hedrick caused the death of Crider with a single gunshot, the murder could not be "vile" as a matter of law.[15] The lengths to which the Supreme Court of Virginia was forced to go in order to escape the dictates of *Godfrey v. Georgia*,[16] and its progeny are instructive. Read

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10. *Id.*, at *4

11. *Id.*, at *1.

12. *Id.*

13. *Id.*, at *10.

14. *Id.*, at *5-9. Many of Hedrick's claims were denied in a cursory fashion by reference to prior decisions. For that reason they will not be discussed in detail in this summary. These claims include: (1) failure of the trial court to allow for a jury questionnaire; (2) denial of counsel's request for the Commonwealth to provide a bill of particulars; (3) the admittance into trial evidence of a photo of the victim's face after she was shot in the face with a shotgun that was both enlarged and duplicative; (4) refusal of the trial court to set aside the verdicts of the jury finding him guilty of robbery, rape and forcible sodomy as contrary to the law and the evidence; (5) the trial court's failure to commute the sentence of death to a sentence of life imprisonment. *Id.*, at *5-6, 8.

The court also determined that the sentence of death was not imposed under an influence of passion, prejudice or any other arbitrary factor, and that the sentence of death was not excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. *Id.*, at *9.

15. *Id.*, at *6.

16. 446 U.S. 420 (1980) (holding that the Georgia statute dictating the factors of eligibility for death, which states that the offense be outrageously or wantonly vile, horrible or inhuman, was unconstitutionally vague in violation of the Eighth and Fourteenth Amendments, and that such term requires a narrowing construction; the Court declared that the

together with the courts' pronouncements about the vileness factor found in *Reid v. Commonwealth*,[17] and *Cherrix v. Commonwealth*,[18] the *Hedrick* opinion reveals that the court continues to apply the factor in an unconstitutional manner and will go to great lengths to continue doing so.

### *A. The Vileness Aggravator—Aggravated Battery*

Virginia's vileness aggravator requires that the conduct of the defendant in committing the capital murder must "involve[] torture, depravity of mind or an aggravated battery to the victim."[19] On appeal to the Supreme Court of Virginia, Hedrick claimed that under *Godfrey* there could not have been an aggravated battery as the victim died from a single shotgun wound.[20] The court held that the language of the vileness factor, identical to that of the Georgia statute in *Godfrey*, is to be construed disjunctively, meaning that either torture, depravity of mind or aggravated battery will suffice.[21] The court held that aggravated battery, which it defined as conduct "qualitatively and quantitatively more culpable then the minimum necessary"[22] to accomplish the act of murder, was satisfied because of acts committed by the defendant *before* the shooting[23] and indeed before he had even formed the intent to kill.[24]

The Supreme Court of Virginia did at least refer, however inaccurately, to some of the specific evidence presented when it upheld the aggravated battery finding.[25] The court did not reference specific evidence when it made the additional conclusory observation that the killing involved torture[26] and depravity of mind.[27]

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single shotgun wound in this case did not establish vileness in that it did not involve torture or depravity of mind and was not aggravated battery).

17. *See* Matthew K. Mahoney, Case Note, 11 CAP. DEF. J. 457 (1999) (analyzing Reid v. Commonwealth, 506 S.E.2d 787 (Va. 1998)).

18. *See* David D. Leshner, Case Note, 11 CAP. DEF. J. 419 (1999) (analyzing Cherrix v. Commonwealth, Nos. 98-1798, 98-2063, 1999 WL 101077 (Va. Feb. 26, 1999)).

19. VA. CODE ANN. § 19.2-264.4(C) (Michie 1998).

20. *Hedrick*, 1999 WL 101079, at *6. *See* Godfrey v. Georgia, 446 U.S. 420, 432-33 (1980).

21. *Hedrick*, 1999 WL 101079, at *7. *See Godfrey*, 446 U.S. at 422.

22. *Hedrick*, 1999 WL 101079, at *7.

23. *Id.* "Before the defendant murdered Crider, he had robbed her and raped her, forced her to perform an act of oral sodomy upon him, bound her hands with duct tape, covered her eyes and mouth with duct tape, and held her in captivity for five hours." *Id.*

24. *Id.*, at *2-3. Hedrick's intent to kill was not formed until after he raped her. *See supra* text accompanying notes 5-6.

25. *Id.*, at *7.

26. *Id.* "Hedrick committed an aggravated battery upon Crider and caused her to suffer physical injury and torture preceding her death." *Id.*

27. *Id.* "[T]he evidence was overwhelming that the defendant's conduct showed a

In *Hedrick* and other cases, the court demonstrates a misunderstanding of, or indifference to, both the purpose of the aggravating factor and the law governing its application. *Godfrey* requires a narrowing construction of the statutory language because the language of the statute is insufficient.[28] The purpose of the required narrowing construction is to guide the fact finders so that only the most culpable among murderers are sentenced to death. It is essential that the narrowing construction be given to the jury or applied on appeal.

In spite of *Godfrey*, Virginia has not recognized any need to require narrowing constructions for the vileness factor in the past.[29] However, some Virginia courts have occasionally applied definitions purporting to help guide in determining which murders are vile.[30] In Virginia, there is no definition for the torture prong, and the definition for depravity of mind is as vague as the statutory language itself.[31] The definition for aggravated battery, however, could have possibly passed constitutional muster had the court focused on a qualitative increase in personal culpability. Until *Hedrick*, the court never focused on increased personal culpability at all.[32] In the past, the court has simply counted stab wounds or gunshot wounds. In fact, in *Reid*, the court denied that the factor requires a mental element of increased culpability.[33] In *Hedrick*, however, when counting wounds would not support the aggravating factor, the court simply did a *post-hoc* search of the record to identify what it found particularly reprehensible. Apparently the limiting language of the factor, the "conduct in committing the offense" was outrageously vile, encompasses as much conduct as is required to sustain the death sentence.[34]

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depravity of mind." *Id.*

28. *Godfrey*, 446 U.S. at 427-33.

29. *See* Clark v. Commonwealth, 257 S.E.2d 784 (Va. 1979) (holding that a trial court's refusal to give a narrowing definition of torture, aggravated battery, or depravity of mind was not reversible error). This holding has not been overruled.

30. *See* Smith v. Commonwealth, 248 S.E.2d 135 (Va. 1978). Though Virginia has not acknowledged that narrowing constructions are necessary in response to *Godfrey*, the court in *Smith* applied a narrowing construction of aggravated battery that defined aggravated battery as quantitatively and qualitatively more culpable than the minimum necessary to complete the act of murder. *Id.*, at 149.

31. The court in *Smith* defined depravity of mind as a degree of moral turpitude and psychical debasement surpassing that inherent in the definition of ordinary legal malice and premeditation.

32. *Hedrick*, 1999 WL 101079, at *7.

33. *Reid*, 506 S.E.2d at 793.

34. VA. CODE. ANN. § 19.2-264.4(C) (Michie 1998). There is little need to discuss the court's casual observance that the torture and depravity of mind components were satisfied. The opinion, fairly read, simply holds "it is so because we say it is so."

The court's attempt to distinguish *Godfrey* on its facts is also inadequate.[35] In *Godfrey,* the dissent reminded the majority of the facts of the case where the petitioner used a shotgun, an instrument "hardly know[n] for its surgical precision" in killing his first victim, while the second victim observed and stood waiting for her inevitable fate, and whose "last several moments . . . must have been as terrifying as the human mind can imagine."[36] The majority in *Godfrey* determined that this was not vile.[37] The Virginia Supreme Court in *Hedrick* determined that *Godfrey* was factually distinguishable.[38] The court stated that "[t]he defendant, an avid hunter who considered himself skilled with firearms, shot the victim in the face with the shotgun, as she stood helplessly awaiting her execution at a distance of three to seven feet from the barrel of the shotgun."[39] The court concluded that "the manner in which the defendant terrorized and killed Crider was qualitatively and quantitatively more culpable than the minimum necessary to accomplish the act of murder."[40] This is a less than honest comparison of the facts in *Hedrick* to those in *Godfrey.* The difference between the two is not so great as to warrant a different outcome.[41]

Although the Supreme Court of Virginia has never explicitly recognized its obligation under *Godfrey* to apply narrowing constructions, it has defined aggravated battery as "a battery which, qualitatively and quantitatively, is more culpable than the minimum necessary to accomplish an act of murder."[42] The Supreme Court of Virginia's application of this narrowing construction is inconsistent and arbitrary, and thus unconstitutional. By applying the narrowing construction in this manner, the court, in violation of the Eighth and Fourteenth Amendments, fails to allow the narrowing construction to serve its constitutional purpose.

To reconcile *Hedrick* with *Godfrey* and *Reid,* the Supreme Court of Virginia in *Hedrick* expanded the time frame around the commission of the offense to include the prior acts of rape, forcible oral sodomy and abduc-

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35. *Hedrick,* 1999 WL 101079, at *7.

36. *Godfrey,* 446 U.S. at 449.

37. *Id.* at 432-33.

38. *Hedrick,* 1999 WL 101079, at *7 (citing *Godfrey,* 446 U.S. at 432).

39. *Id.*

40. *Id.*

41. In a misstatement of the *Godfrey* facts that was revealing, though likely inadvertent, the *Hedrick* court erroneously identified Godfrey's weapon as a rifle when, in actuality, the weapon was a shotgun. *Id.*

42. *Smith,* 248 S.E.2d at 149. There are minimal, if any, definitions explicitly explaining the prongs of aggravated battery, depravity of mind and torture within the vileness aggravator. The definition for aggravated battery is the most comprehensive and may pass muster if the court clarifies how it is to be applied at trial. The definition of depravity of mind is just as vague as the term itself, and torture has no narrowing definition at all.

tion.[43] The court did not state specifically what made the murder in *Hedrick* both "quantitatively and qualitatively more culpable than the minimum necessary to commit murder."[44] The court seems to roll together the concepts of "qualitatively and quantitatively" to include acts separate and distinct from the actual murder in order to determine that the petitioner committed aggravated battery within the statutory definition and it's purportedly narrowing construction.[45] In light of this analysis, it seems the narrowing construction has no meaningful effect and virtually any murder could ultimately qualify as aggravated battery.

### *B. Notice and Opportunity to Defend*

The Supreme Court of Virginia's revelation for the first time on appeal of the conduct it considered supportive of aggravated battery reveals another aspect of its inconsistent application of the vileness factor. The aggravating factor is an element the state must prove to render an accused eligible for death.[46] Hedrick's eligibility for death must be proven beyond a reasonable doubt before it can even be considered as a possible sentence.[47] The Commonwealth has two options for proving death eligibility.[48] The first option seeks to prove that the offense was "outrageously or wantonly vile, horrible or inhuman" in nature (vileness factor), and the second is to prove that the defendant poses a "continuing serious threat to society" (future dangerousness factor).[49] Because a defendant in Virginia is not eligible for death absent a finding of vileness or future dangerousness beyond a reasonable doubt, the component prong of vileness on which the Commonwealth chooses to rest its case becomes an element of its case for death. In *Simmons v. South Carolina*[50] and *Gardner v. Florida,*[51] the United States Supreme Court applied the principle that a defendant has a due process right to deny or explain the state's case for death.[52] If a capital murder indictment does not identify whether the Commonwealth plans to show vileness or future dangerousness in proving its case for death, the defendant can not prepare an effective defense against the Commonwealth's effort to prove its case for

43. *Hedrick*, 1999 WL 101079, at *7.

44. *Id.*

45. *Id.*

46. VA. CODE. ANN. § 19.2-264.2 (Michie 1998).

47. VA. CODE. ANN. § 19.2-264.4(C) (Michie 1998).

48. *Id.*

49. *Id.*

50. 512 U.S. 154 (1994) (noting that the defendant has a due process right to deny or explain the charges against him).

51. 430 U.S. 349 (1977) (holding that an individual shall not be sentenced to death on the basis of evidence or information he had no opportunity to deny or explain).

52. *Simmons*, 512 U.S. at 161-62; *Gardner*, 430 U.S. at 362.

death. Furthermore, if the Commonwealth chooses to assert that the defendant is eligible for death because the offense was outrageously vile, it must also state in the indictment or otherwise give notice of which component of the vileness factor it plans to assert at trial as well as the narrowing construction of that component.

If such information is not contained in the indictment, or communicated in some other manner, the Commonwealth has not given the defendant the requisite notice as to how it will prove its case for death. Consequently, the defendant is denied the ability to defend the case against him. The defendant has a due process right to deny and to explain the state's evidence against him. Denial of this right violates the Due Process Clause of the Fourteenth Amendment.[53]

Hedrick's indictment contained nothing about aggravating factors. The court in *Hedrick* also denied the defendant's motion for a bill of particulars which was directed at learning which factor and prong the Commonwealth intended to assert at trial to prove its case for death, including what evidence the Commonwealth considered relevant to vileness.[54] Therefore, Hedrick was completely in the dark as to the state's case for death until the Supreme Court of Virginia issued its opinion, at which point he could not defend himself.

## *IV. Conclusion*

Defense counsel should continue to raise and preserve, on state and federal constitutional grounds, the issue that unlawful trial by ambush is the frustrating reality of the application of the aggravated battery factors for death in Virginia.

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53. *See Simmons*, 512 U.S. at 154; *Gardner*, 430 U.S. at 349.

54. *Hedrick*, 1999 WL 101079, at *5.