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WOODFIN v. COMMONWEALTH __ Va. , S.E.2d __ (1988)

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(Va. September 23, 1988)

(WESTLAW, Sct library)

FACTS

On October 24, 1984, at approximately 8:45 p.m., Susan Hall and Frank Gabbin were shot and killed in their residence at 111 Strawberry Street in Richmond. Empty cartridges were found at the scene. A witness saw and identified defendant inside the front door of the residence at 8:50 p.m. Evidence of other shootings by Woodfin, admitted over objection but approved by the court in this opinion, established that a weapon recovered two days after the killings was the murder weapon.

Kenneth Woodfin was found guilty of capital murder of Hall, murder of Gabbin, and use of a firearm in the killings. He was sentenced to life terms for capital murder and first-degree murder, and terms of specific years for the firearms charges.

Appeal was taken to the Supreme Court of Virginia because Woodfin challenged, *inter alia,* the constitutionality of the Virginia statute defining capital murder, §18.2-31.

HOLDING

a) Constitutionality of Virginia code §18.2-31.

First, the court, in an opinion by Justice Compton, declined to address the general facial statutory challenge because the defendant did not allege that his conduct was constitutionally protected or that the statute affected his First Amendment rights. Instead, the court narrowed the question to "whether § 8.2-31(g) is vague as applied to the defendant's conduct in this case." *Woodfin v. Commonwealth,* No. 880244 1, 3 (Va. Sept. 23, 1988) (WESTLAW, Sct library). Virginia Code § 18.2-31(g) provides that capital murder is the willful, deliberate and premeditated killing of more than one person as a part of the same act or transaction. The court stated the general law that "a penal statute is void for vagueness if it fails to give a person of ordinary intelligence notice that his contemplated conduct is forbidden by the statute and if the enactment encourages selective law enforcement." *Id,* quoting *Flannery v. City of Norfolk,* 216 Va. 362, 218 S.E.2d 730 (1975). Not finding anything "uncertain or ambiguous" in the language of the statute, the court stated that "defendent reasonably should have been on notice that the statute applied to his actions," *Woodfin,* No. 880244 at 4. The court defended the statute's purpose as penalizing two offenses that "are connected so closely 'in time, place and circumstance that a complete account of one charge cannot be related without relating details of the other charge.' *State v. Fitzgerald,* 267 Or. 266, 273, 516 P.2d 1280, 1284 (1973)." *Id.*

c) Double jeopardy.

The defendant argued that the court punished him twice for the same offense of killing Frank Gabbin when it imposed a life sentence for the murder of Gabbin and a life sentence for the capital murder of Hall under Virginia Code §18.2-31(g). The gist of the argument is that the murder of Gabbin was used twice in the punishment of Woodfin, once as a first degree murder and once to elevate the killing of Hall to capital murder.

The court acknowledged the Fifth and Fourteenth Amendments' protection against multiple punishments for the same offense as preventing the court from exceeding the legislative authorization which defines separate offenses. *Id.,* at 10. The court quoted *Turner v. Commonwealth,* which found the General Assembly had "clearly indicated its intent to impose multiple punishments." *Turner v. Commonwealth* 221 Va. 513, 530, 273 S.E.2d 36, 47 (1980), cert. denied 451 U.S. 1011 (1981). *Woodfin,* No. 880244 at 10. The court stated that it could not "say that [in passing the capital murder statute] the legislature intended the elimination of underlying sentencing authority for murder of the first degree." *Id.,* at 10-11. The court categorized the sentences as "a life sentence for the killing of Hall and a life sentence for the killing of Gabbin, not two life sentences for the killing of Gabbin," *Id.* So, the murder of Gabbin was used twice in the punishment of Woodfin, but the court found that this is not in violation of the protection against multiple punishments because the legislature intended this result when it wrote the statute.

ANALYSIS

The Virginia Supreme Court only considered vagueness of the statute on a case-by-case basis, thereby leaving open future litigation on the matter of its constitutionality as a whole.

The court found that Virginia Code §18.2-31(g) making it a capital offense to kill more than one person as part of the same act or transaction is not a multiple punishment when combined with punishment for the killing of the other person. An accused may be punished both for the killing of one person and for the capital offense of killing more than one person. The court found the legislative intent to be gradation.

The court, in analyzing the vagueness claim, conducted a Fourteenth Amendment "notice" analysis—notice to persons of the punishment for their actions. In *Maynard v. Cartwright,* 108 S.Ct. 1853, 1857-58 (1987), the United States Supreme Court found a similar analysis of the "vileness" aggravating factor by Oklahoma's Supreme Court to be erroneous. The Court held the proper vagueness test to be that of the Eighth Amendment—directed toward the jury—to inform juries what they must find to impose the death penalty. *Id.,* at 1858. Reconciliation of *Woodfin* and *Maynard* revolves around the significance of the fact that *Maynard* dealt with an aggravating *sentencing* factor, while *Woodfin* deals with an aggravator included in the definition of capital murder. (Helen Bishop)