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## YEATTS v. COMMONWEALTH 1991 WL 184812 (VA.)

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expert testimony on that issue. 242 Va. 107, 114, 406 S.E.2d 39, 43 (1991), citing *Edmonds v. Commonwealth*, 229 Va. 303, 311, 329 S.E.2d 807, 813 (1985); *Barefoot v. Estelle*, 463 U.S. 880, 891 (1983).

According to the court, because evidence established that Saunders' crime was dispassionate and unprovoked and that the crime was followed by a threat to silence an eyewitness to the crime, and because the evidence included Saunders' past criminal record and prior history, the trial court's finding of future dangerousness and its consequential imposition of the death penalty were justified. The trial court's sentence, the court held, was not tainted by passion or prejudice and was not disproportionate to the penalty imposed in similar cases.

## ANALYSIS / APPLICATION IN VIRGINIA

The court dismissed Saunders' claim that the evidence was insufficient to convict him of capital murder in the commission of a robbery. Although the evidence suggested that the killing occurred before Saunders took the victim's possessions, and that the robbery may have been a mere afterthought, the court followed its precedents by construing "in the commission of robbery," Va. Code Ann. §18.2-31(4), very broadly. See *Whitley v. Commonwealth*, 223 Va. 66, 286 S.E.2d 162 (1982) (holding that whether the victim is dead when the theft occurs is immaterial) and *Mosley, Robbery, Rape and Abduction: Alone and as Predicate Offenses to Capital Murder*, Capital Defense Digest, Vol. 2, No. 2 (April 1990).

Saunders argued that the trial court erred in admitting evidence of unadjudicated crimes to show future dangerousness at the penalty phase of his trial. Although the court noted that the trial court did not base its findings and sentence on unadjudicated crimes, it is clear that the use of this type of evidence at the penalty stage would have been approved. See *Poyner v. Commonwealth*, 229 Va. 401, 329 S.E.2d 815 (1985). If unadjudicated crimes are admissible, it is imperative that Virginia defense counsel acquire notice that the Commonwealth intends to use this type of evidence. A motion *in limine* and a motion for a Bill of Particulars are two means through which the defense may demand to know what crimes, either adjudicated or unadjudicated, will be used by the Commonwealth to show future dangerousness; these motions are also mechanisms through which the defense may seek to exclude the crimes from the proceedings.

Some adjudicated crimes are not relevant to the penalty phase of a capital trial. Thus, defense counsel should also use the motion *in limine* to exclude evidence of those crimes from the sentencing phase.

It is also advisable that defense counsel offer jury instructions regarding the necessity that the fact finder conclude by some standard of proof (beyond a reasonable doubt, clear and convincing evidence, etc.) that the defendant committed the unadjudicated acts before they may be considered as evidence of future dangerousness.

Likewise, since the Virginia Supreme Court held that the weight to be accorded to expert testimony is a function of the fact finder, Virginia defense counsel, faced with expert testimony supporting future dangerousness, could offer jury instructions that reiterate the notion that this type of testimony is merely "educated opinion" testimony to which the jury does not have to give evidentiary weight.

Saunders also contended that the trial court erred in its finding of future dangerousness. Saunders argued that evidence presented at the penalty phase that showed that, while awaiting his sentencing hearing, Saunders engaged in violent conduct within the jail unduly influenced the trial court. However, the Virginia Supreme Court, in considering this evidence, viewed it as falling under the purview of Code §19.2-264.4(C) in that Saunders' behavior while he awaited sentencing was part of "the prior history of the defendant." 242 Va. at 117, 406 S.E. 2d at 45. The court found Saunders' post-trial conduct to be "uniquely probative of future dangerousness," because it felt that the impending penalty phase "would prompt model behavior." 242 Va. at 119, 406 S.E. 2d at 46.

It can be argued that post-trial conduct should never be allowed into evidence, for Virginia's statute authorizes only the defendant's history prior to the offense, not the defendant's history prior to sentencing.

Finally, the court held that a defendant who murders and then expresses no regret or remorse for his crime is proper evidence for the sentencer to consider in its finding of future dangerousness; however, the parameters of the defendant's lack of remorse must be confined to the time of the offense (arguably, the time immediately surrounding the offense). The Commonwealth should not be permitted to violate the defendant's fifth amendment rights by arguing, for instance, that the defendant's silence at trial is evidence of a lack of remorse.

Summary and analysis by:  
Wendy Freeman Miles

## YEATTS v. COMMONWEALTH

1991 WL 184812 (VA.)  
Supreme Court of Virginia

### FACTS

Ronald Dale Yeatts was convicted of robbery and capital murder in the commission of robbery while armed with a deadly weapon. Based upon a finding only of "future dangerousness," the jury set Yeatts' penalty at death. The trial court accepted the jury's findings.

After spending the entire afternoon of September 23, 1989 drinking alcohol and smoking marijuana and crack cocaine, Yeatts and Charles Michael Vernon, an acquaintance, befriended Mrs. Ruby Meeks Dodson and then gained entrance into her house. Upon entry, Yeatts followed Dodson to the kitchen, where she was later found dead, and Vernon proceeded to the bedroom where he searched for money. Subsequently Yeatts joined Vernon in the bedroom. There they found a pocketbook with seven hundred dollars. Vernon testified that as they were leaving he noticed that Yeatts had bloody hands and a pocket knife that he had given him. Yeatts told Vernon, "I cut her throat, don't worry about it . . ."

*Yeatts v. Commonwealth*, 1991 WL 184812, \*1. Dodson's "death resulted from a 'large incised wound of the right neck, with . . . extensive bleeding from the carotid artery and jugular vein.' The victim suffered at least twelve other stab wounds to the face, neck, and Chest." *Id.* at \*12. Vernon then drove Yeatts to a riverbank where Yeatts threw the pocket knife and empty pocketbook into the river.

At the scene of the crime the police found sunglasses with a fingerprint of Yeatts' girlfriend and bloody footprints identical in size and type to Yeatts' tennis shoes. In addition to circumstantial evidence, Yeatts implicated himself in Dodson's murder through statements given to the police, his sister-in-law, and Vernon.

### HOLDING

The Virginia Supreme Court affirmed the conviction and sentence of death, deciding numerous issues adversely to the claims raised by Yeatts.

This summary will not discuss those claims dealt with by the court in a summary manner, most claims dealing with non-capital issues or claims whose resolution rested on facts specific to this case. Among those are claims related to jury selection, the sufficiency of evidence of robbery, the relevancy of mental retardation to confessions, the admissibility of photographs of the victim's wounds, and several claims the court found to be foreclosed by its prior decisions. It should be noted, however, that some issues disposed of summarily are unresolved federal constitutional issues and were preserved for federal review. Among the preserved issues were that "[t]he jury instructions and verdict forms employed at the penalty stage tend to inhibit the jury from giving independent weight to mitigating factors," and that "[a] capital defendant should be allowed to explain to the jury his parole eligibility in the event a life sentence is imposed." *Id.* at \*2, \*3.

## ANALYSIS / APPLICATION IN VIRGINIA

This summary will address the court's holding that several claims were barred because Yeatts failed to observe Virginia procedural rules and that a wide range of evidence, including unadjudicated acts of misconduct, was properly considered on the issue of future dangerousness.

### Waivers and Defaults

In addition to finding that Yeatts waived his Miranda rights, the court also found that Yeatts waived his right to have the court address certain issues on appeal because the petitioner failed to raise an objection at trial, failed to brief an objection, and failed to make a timely motion regarding an objection. Although the court held that Yeatts waived his right to have some of his objections considered upon appeal, it is more appropriate to view these waivers as defaults because he lost his right to appellate review of these particular objections because of an omission or failure to perform a legal duty.

On appeal, Yeatts objected to the admission of a post-sentence psychiatric report as evidence of future dangerousness. The petitioner claimed that this report "equated dangerousness with low intelligence, a standard . . . which 'has long been constitutionally impermissible.'" *Id.* at \*11. But, the court refused to entertain Yeatts' objection on appeal pursuant to Rule 5:25 because "the report was admitted into evidence without objection." *Id.* at \*11.

At trial, Yeatts objected to the admission into evidence of white shoes which were taken from his cell. Over his objection, the trial court admitted the shoes into evidence and he assigned this admission as a trial error. The court held that Yeatts waived his right to the review of this objection because he did not brief the objection pursuant to Rule 5:27(e).

Yeatts' motion for a mistrial arose from a pretrial discovery motion for the records of any conversations he had with law enforcement officials. The commonwealth responded with a transcript of a conversation he had with Deputy Doss on October 2, 1989. At trial, Deputy Doss spoke of the conversation on October 2, 1989 and of another conversation he had with Yeatts on the next day. At that moment, the defense counsel objected and the trial court sustained the objection. After several more questions by the commonwealth, defense counsel made a motion for a mistrial because Deputy Doss referred to prior convictions and because the commonwealth's discovery answer did not include the transcript of the conversation between Yeatts and Deputy Doss on October 3, 1989. In response to Yeatts' motion for mistrial, the trial court judge took "curative action" by reading the discovery response to the jury. *Id.* at \*10. The defense counsel did not object to this action at that moment but, the very next day, made another motion for a mistrial where he again alleged that the discovery response was inadequate. The trial court denied the second mistrial motion. The Virginia Supreme Court held that Yeatts had waived his right to appellate review of his motions for mistrial because they were not

timely made. The court stated, "[m]aking a timely motion for mistrial means making the motion 'when the objectionable words were spoken.'" *Id.* at \*10 (quoting *Reid v. Baumgardner*, 217 Va. 769, 774, 232 S.E.2d 778, 781 (1977)). Thus, the court shows that it will not rule upon objections raised by the petitioner unless they are raised at trial, briefed, timely made, and in strict conformity with Virginia procedural rules. See also Powley, *Perfecting the Record of a Capital Case in Virginia*, Capital Defense Digest, Vol. 3, No. 1, p. 26 (1990).

### Sufficiency of Evidence of Future Dangerousness

Yeatts received the death penalty upon the finding by the jury of future dangerousness, one of only two aggravating factors. Yeatts claimed that there was insufficient evidence to prove beyond a reasonable doubt that "there is a probability that [Yeatts] would commit criminal acts of violence that would constitute a continuing serious threat to society." *Id.* at \*11 (quoting Va. Code Ann. § 19.2-264.2 (1990)). More specifically, Yeatts asserted that all but one of his prior convictions were non-violent and that unadjudicated claims were irrelevant. Thus, Yeatts claimed, non-violent crimes and unadjudicated claims can not support a finding of future dangerousness.

The court disagreed with Yeatts' characterization "that his '[p]rior convictions with the exception of assault and battery on a jail inmate were convictions of a non-violent nature' and that the unadjudicated claim he raped his sister-in-law is 'beyond belief.'" *Id.* at \*11. The court found that, of Yeatts' ten felony convictions, he had "at least four convictions of violent or potentially violent crime[s]" where one was for assault and battery on a jail inmate, one was for burglarizing a dwelling house, and two were for burglarizing churches. *Id.* at \*12 (emphasis added). The court held that the burglary of a church "certainly would pose a threat to the personal safety of those who happen to be present in the church when a burglar enters or who happen to enter while a burglary is in progress." *Id.* at \*12 (emphasis added). In the present case, no evidence was introduced to show that anyone was present in the churches, that anyone was entering the churches, or that anyone was in danger. The court also considered Yeatts' felony conviction for consensual sodomy, four felony convictions for grand larceny, and four misdemeanor convictions as proof of future dangerousness. Of particular importance was the fact that "[a]ll but one of the felony offenses of which he was convicted were committed while he was under the supervision of probation or parole authorities." *Id.*

Also, the court stated, "[i]n addition to his record of crime, Yeatts had a history of unadjudicated misconduct" which included the alleged rape of his sister-in-law, the alleged attempt to recruit an accomplice in connection with that rape, an alleged threat to kill his father, and the mailing of a threatening letter to a neighbor. *Id.* "Finally," the court added, "the circumstances relating to the commission of the murder itself are reflective of a high degree of violence . . ." *Id.* In conclusion, the court found sufficient proof of future dangerousness based on any felony convictions, misdemeanor convictions, unadjudicated claims, and on the violence of the crime itself.

Motions in limine with appropriate federal due process objections should be raised pre-trial to attempt to limit evidence to that which would suggest a likelihood of continuing violent criminal acts that would pose a threat to society in the future. If the motion in limine is denied, objections should be timely raised at the trial court, assigned as error and briefed on appeal, all in strict accordance with Virginia procedural rules. Once a motion in limine is denied, a new issue is presented for review. If a motion in limine is denied, the review can then be whether the specific evidence of future dangerousness that was admitted over petitioner's objection was relevant to the jury's finding of future dangerousness.

Summary and analysis by:  
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