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Tibbs v. Commonwealth
525 S.E.2d 579 (Va. Ct. App. 2000)
Winckler v. Commonwealth
531 S.E.2d 45 (Va. Ct. App. 2000)

I. Facts

On the evening of July 26, 1997, Kelley Ann Tibbs ("Tibbs"), Domica Winckler ("Winckler"), Stephanie Cull ("Cull"), Dana Vaughn ("Vaughn"), Tracy Bitner ("Bitner"), and Stacey Hanna ("Hanna") drove to Marsh Field in Chesterfield County. Tibbs, Winckler, Cull, and Bitner planned to assault Hanna. Tibbs was angry because Hanna told Tibbs that Bitner was involved in a new relationship and no longer wanted a romantic relationship with Tibbs. The group assaulted Hanna. Winckler and Tibbs began the assault with hitting and kicking, and then began cutting Hanna with razor-blade box cutters. Winckler also hit Hanna with a belt and struck her with a cinder block as Hanna lay on the ground. The group left Hanna at the field, but returned after a few minutes because of fear that Hanna would report the incident. The women put Hanna in the trunk of the car and drove away. Cull, the driver, stopped the car along a back road. Tibbs, Winckler, Cull, and Bitner went to the back of the car and opened the trunk. Winckler demanded that Hanna give her the jewelry Hanna was wearing. Hanna asked to keep one of her rings, but Winckler took all of them. Cull drove the group to a secluded area where the victim was removed from the trunk and dragged under a fence and down a deserted path. Hanna's clothes were removed because they allegedly belonged to Tibbs. At some point, Hanna was pushed face down into a mud puddle. Bitner, Winckler, and Tibbs continued the assault on Hanna. Winckler stabbed Hanna in the chest with a box cutter and Bitner cut Hanna's throat. Tibbs then attempted to choke Hanna. Tibbs also stabbed Hanna with a stick and stuffed mud in her mouth.¹ The women then left the scene and disposed of Hanna's clothes in a trash can. On July 27, police officers took the women to the Richmond police department for questioning. At the police department, investigators recovered Hanna's watch from Winckler's wrist. Winckler and Tibbs relayed much of the above story to the police.²

1. Tibbs v. Commonwealth, 525 S.E.2d 579, 583 (Va. Ct. App. 2000). According to the medical examiner, Hanna suffered a minimum of 65 stab wounds and numerous blunt force injuries. The cause of death was determined to be excessive blood loss and drowning. *Id.*

2. *Id.*; Winckler v. Commonwealth, 531 S.E.2d 45, 48 (Va. Ct. App. 2000).

In separate jury trials Tibbs and Winckler each were found guilty of robbery, abduction, and capital murder for the killing of Hanna during a robbery or attempted robbery.³ Tibbs was sentenced to ten years for the robbery conviction, ten years for the abduction, and life imprisonment for the capital murder conviction.⁴ Winckler was sentenced to thirty years for the robbery conviction, ten years for the abduction, and death for the capital murder conviction.⁵ However, the judge set aside Winckler's death sentence and instead imposed a sentence of life imprisonment.⁶

On appeal to the Court of Appeals of Virginia, Tibbs contended that both the robbery verdict and capital murder verdict were based on evidence that was insufficient as a matter of law. The Court of Appeals only considered the question of whether the evidence was sufficient to support Tibbs's capital murder conviction.⁷ Winckler also appealed her capital murder conviction. Winckler contended that the trial court erred in refusing to instruct the jury that the robbery must have been a "motivating factor" for the killing and that the evidence was insufficient to prove that the robbery motivated Winckler to kill Hanna.⁸

II. Holdings

The Court of Appeals of Virginia found the Commonwealth's evidence sufficient to prove beyond a reasonable doubt that Tibbs committed a murder in the commission of a robbery and affirmed her capital murder conviction.⁹ Winckler's capital murder conviction was also affirmed.¹⁰ The court held that whether robbery was a motive in the killing of Stacey Hanna was not an issue in determining whether the murder occurred in the commission of the robbery. The court found sufficient evidence that the robbery and killing were interdependent objects of a common criminal design and affirmed the conviction.¹¹

III. Analysis / Application in Virginia

A. Sufficiency of the Evidence to Prove Capital Murder

To secure a conviction for capital murder in these cases, the Commonwealth was required to prove the following two offenses: (1) a willful,

3. *Tibbs*, 525 S.E.2d at 583; *Winckler*, 531 S.E.2d at 48; see VA. CODE ANN. § 18.2-31(4) (Michie 2000).

4. *Tibbs*, 525 S.E.2d at 580.

5. *Winckler*, 531 S.E.2d at 48.

6. *Id.*

7. *Tibbs*, 525 S.E.2d at 580-81.

8. *Winckler*, 531 S.E.2d at 46.

9. *Tibbs*, 525 S.E.2d at 590.

10. *Winckler*, 531 S.E.2d at 50.

11. *Id.* at 46-49.

deliberate, and premeditated murder; and (2) robbery or attempted robbery.¹² Tibbs contended on appeal that the Commonwealth was required to prove that the robbery was a motivating factor for the killing.¹³ Tibbs asserted that in order to be found guilty of capital murder in the commission of a robbery, the intent to commit the robbery must be formed before or at the same time as the intent to commit the killing.¹⁴ Tibbs relied on *Branch v. Commonwealth*,¹⁵ *Bunch v. Commonwealth*,¹⁶ and *Edmonds v. Commonwealth*¹⁷ to argue that because she did not intend to kill Hanna until after the completion of the robbery, her conviction for capital murder should have been reversed.¹⁸

The Court of Appeals of Virginia rejected Tibbs's argument, holding that in order for a murder to be committed in the commission of a robbery "the killing must be 'so closely related in time, place, and causal connection as to make the killing . . . a part of the same criminal enterprise.'"¹⁹ The court held that in some situations, proof that the robbery was a motive in the killing might help establish the requisite causal connection, but that such a motive is only a factor in determining that the murder and robbery are part of the same criminal enterprise.²⁰ The court recognized that motive is not an element of the crime of murder, but "merely a circumstance tending to prove the guilt of the alleged perpetrator."²¹

12. *Tibbs*, 525 S.E.2d at 583; see VA. CODE ANN. § 18.2-31(4) (Michie 2000).

13. *Tibbs*, 525 S.E.2d at 584.

14. *Id.* Although Winckler's appeal focused on proposed jury instructions, the issues were identical to those presented in *Tibbs. Winckler*, 531 S.E.2d at 49.

15. 300 S.E.2d 758 (Va. 1983).

16. 304 S.E.2d 271 (Va. 1983).

17. 329 S.E.2d 807 (Va. 1985).

18. *Tibbs*, 525 S.E.2d at 584; see *Edmonds v. Commonwealth*, 329 S.E.2d 807 (Va. 1985). In *Edmonds*, the Supreme Court of Virginia affirmed the defendant's capital murder conviction finding that the robbery and the killing were interdependent objects of a common criminal design. *Edmonds*, 329 S.E.2d at 813; see also *Bunch v. Commonwealth*, 304 S.E.2d 271 (Va. 1983). In *Bunch*, the Supreme Court of Virginia held that the important considerations were that the robbery was the motive for the killing and that *Bunch* had the intent to rob when the victim was killed. *Bunch*, 304 S.E.2d at 280-81; see also *Branch v. Commonwealth*, 300 S.E.2d 758 (Va. 1983). The defendant in *Branch* killed his victim then burned the contents of the victim's wallet. The court found the defendant's only motivation for the taking of the wallet was to conceal the identity of the victim. The court held that the killing and the taking were two separate acts, and that the intent to steal did not exist at the time the killing occurred. *Branch*, 300 S.E.2d at 760.

19. *Tibbs*, 525 S.E.2d at 588 (citing *Briley v. Commonwealth*, 273 S.E.2d 48, 56 (Va. 1980)).

20. *Id.*

21. *Id.* at 587 (citing *Cantrell v. Commonwealth*, 329 S.E.2d 22, 28-29 (Va. 1985) (citations omitted)); see also *George v. Commonwealth*, 411 S.E.2d 12, 21-22 (Va. 1991) (holding that motive goes to intent and may establish that the robbery and killing are so closely related so as to be parts of the same criminal enterprise or interdependent objects of a common criminal design).

The Court of Appeals of Virginia found that the robbery of Hanna was not a mere afterthought.²² The robbery occurred before the murder and the court limited its discussion to the question of whether the robbery and the murder were "part of the same criminal enterprise and interdependent objects of a common criminal design."²³ The court reviewed the evidence presented at trial and concluded that because the killing occurred immediately after the robbery the two acts were part of the same criminal enterprise as a matter of law.²⁴ The court found that the jury could reasonably infer that Tibbs acted in concert with Winckler in the robbery and the killing of Hanna and that the women acted for the "dual purpose of silencing Hanna and furthering Winckler's acquisition of Hanna's property."²⁵

B. Winckler's Death Sentence Set Aside Under Section 19.2-264.5

Virginia Code section 19.2-264.5 gives the judge the authority "upon good cause shown" to set aside a sentence of death and impose a sentence of life imprisonment.²⁶ Cull, Bitner, Tibbs, and Winckler were convicted for the murder of Hanna.²⁷ A jury convicted Cull of first-degree murder and sentenced her to twenty years.²⁸ Bitner was convicted of first-degree murder and the jury recommended a life sentence.²⁹ Winckler was the only defendant for whom the jury recommended the death penalty. Cull, Bitner and Tibbs are all white. Winckler was the only black defendant.³⁰ Although Chesterfield County Circuit Court Judge Herbert C. Gill commented, "I do not think for a minute that this jury regarded sex or race in returning the verdict," the judge set aside the jury's recommendation that Winckler be sentenced to death.³¹

The jurors vigorously defended the verdict. The foreman of the jury expressed pride in the jury's focus on the facts and the elements that had to be found before the recommendation of death could be made.³² The victim's mother testified at sentencing that the victim would not have liked

22. *Tibbs*, 525 S.E.2d at 588 n.2.

23. *Id.* at 580.

24. *Id.* at 590 (citing *Briley*, 273 S.E.2d 48, 55-56).

25. *Id.*

26. VA. CODE ANN. § 19.2-264.5 (Michie 2000).

27. Tom Campbell, *Tearful Tibbs Gets Life Term, 20 Years in Slaying*, RICH. TIMES-DISPATCH, July 3, 1998, at B6.

28. *Victim Beaten, Cut, Stabbed, and Drowned*, RICH. TIMES-DISPATCH, May 30, 1999, at B5; see *Cull v. Commonwealth*, No. 2202-98-2, 2000 WL 311169, at *1 (Va. Ct. App. Mar. 28, 2000) (affirming Cull's conviction for first-degree murder).

29. Mark Holmberg, *Winckler Jurors Defend Sentence*, RICH. TIMES-DISPATCH, May 4, 1998, at A1.

30. *Id.*

31. Alan Cooper, *Death Verdict Set Aside*, RICH. TIMES-DISPATCH, May 1, 1998, at A1.

32. Holmberg, *supra* note 29.

the idea that Winckler might be put to death because of her race.³³ In response, the Commonwealth argued that Winckler's death sentence was appropriate because her attack on the victim was the most vicious.³⁴ The Commonwealth also argued that the Supreme Court of Virginia has repeatedly rejected defense attorneys' efforts to compare the sentences of co-defendants.³⁵ Even though the jury adamantly defended the death sentence, the judge set aside the death sentence and imposed a sentence of life imprisonment. This may be the first verdict set aside under the authority of section 19.2-264.5.

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33. Cooper, *supra* note 31.

34. *Id.* Jurors explained that the sentence of death was returned because the crime was heinous, premeditated, and Winckler actually robbed Hanna. Holmberg, *supra* note 29.

35. Cooper, *supra* note 31.

