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## United States v. Robinson 275 F.3d 371 (4th Cir. 2001)

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# United States v. Robinson

## 275 F.3d 371 (4th Cir. 2001)

### *I. Facts*

Joseph Brooks Robinson (“Robinson”) and Stanley Leon Obanion, Jr. were convicted of conspiracy to commit car-jackings, using and carrying a firearm during and in relation to a crime of violence, causing death by the use of a firearm during a crime of violence, three counts of car-jacking, one count of attempted car-jacking, and four counts of carrying a firearm during a crime of violence. The crimes occurred between December 29, 1997 and January 2, 1998. The appellants were both sentenced to life imprisonment. The two defendants appealed on several issues including: improper venue, illegal searches, and abuse of discretion in admitting testimony of one of the witnesses. Additionally, Robinson claimed that he was deprived of his statutory right to the assistance of two attorneys.<sup>1</sup>

### *II. Holding*

The United States Court of Appeals for the Fourth Circuit affirmed the ruling of the United States District Court for the District of Maryland.<sup>2</sup> The Fourth Circuit held that venue was proper in the District of Maryland, all searches were sufficiently tied to the carjacking and racketeering crimes, and the witness’s testimony was not hearsay.<sup>3</sup> Notably, the Fourth Circuit declined to exercise its discretion to correct the plain error that occurred when the district court failed to provide defendants with their statutory right to two attorneys after they had been charged with capital crimes.<sup>4</sup>

### *III. Analysis / Application in Virginia*

The issue analyzed in this note is the refusal of the Fourth Circuit to notice the plain error made by the District Court in failing to appoint two attorneys when the defendants had been charged with a death-eligible crime. In *United States v Boone*,<sup>5</sup> a panel of the Fourth Circuit held that a defendant charged with a death-eligible crime is entitled, under 18 U.S.C. § 3005, to representation by two

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1. United States v. Robinson, 275 F.3d 371, 375 (4th Cir. 2001).
  2. *Id.*
  3. *Id.* at 378-82.
  4. *Id.* at 384.
  5. 245 F.3d 352 (4th Cir. 2001).

attorneys regardless of whether the Government actually seeks the death penalty.<sup>6</sup> In the case at hand, because Robinson failed to object to the appointment of only one attorney, the standard of review used by the Fourth Circuit was the plain error standard.<sup>7</sup> In order for the Court to find plain error, the defendant must prove the following three elements: (1) there was an error; (2) the error was plain; and (3) the error affected the defendant's substantial rights.<sup>8</sup> However, even if the defendant meets these three elements, it is still within the discretion of the court to correct the error. The court need not correct the error unless the error "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings."<sup>9</sup> The Fourth Circuit concluded that Robinson did satisfy the three elements of plain error.<sup>10</sup>

Robinson was initially provided with two attorneys during pretrial proceedings, but upon the Government's decision not to seek the death penalty, one of the attorneys was excluded from his duties.<sup>11</sup> Under *Boone*, failure to provide a death-eligible defendant with two attorneys, even when the Government declines to seek death, is plain error.<sup>12</sup> This error is not reviewable for harmlessness so it necessarily affected Robinson's substantial rights.<sup>13</sup> In the instant case, the Fourth Circuit held that Robinson had in fact met all the elements for plain error.<sup>14</sup> However, the Court, in its discretion, refused to take notice of the plain error stating that the error "did not affect the fairness, integrity, or public reputation of judicial proceedings."<sup>15</sup>

In order to avoid being subject to the discretion of the court it is necessary for a defendant to object when the court fails to appoint the statutorily required two attorneys for a death-eligible crime. Had Robinson objected in this case, his conviction would have been vacated as Boone's conviction was vacated. A defense attorney always should remember to object when a defendant is charged with a death-eligible crime and the court fails to appoint two attorneys. This objection is similar to the long list of objections that defense attorneys must make in order to avoid procedural default. While failing to object when two attorneys are not assigned does not leave the defendant without options in the way that failing to object to avoid procedural default does, it does place the

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6. *United States v. Boone*, 245 F.3d 352, 358 (4th Cir. 2001); see 18 U.S.C. § 3005 (2000) (mandating that a defendant charged with a capital crime is entitled to representation by two attorneys regardless of whether the Government actually seeks the death penalty).

7. *Robinson*, 275 F.3d at 383.

8. *Id.* at 383 (citing *United States v. Olano*, 507 U.S. 725, 732 (1993)).

9. *United States v. Olano*, 507 U.S. 725, 735 (1993).

10. *Robinson*, 275 F.3d at 384.

11. *Id.*

12. *Boone*, 245 F.3d at 360-61.

13. *United States v. David*, 83 F.3d 638, 647 (4th Cir. 1996) (holding that an error that does not affect substantial rights is harmless error).

14. *Robinson*, 275 F.3d at 384.

15. *Id.*

defendant within the discretion of the court, which is essentially the equivalent. However, if the defendant objects at trial, the court is forced to vacate a subsequent conviction for failure to appoint two attorneys when the defendant was charged with a death-eligible crime.

Cynthia M. Bruce



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**CASE NOTES:**  
**Supreme Court of Virginia**

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