Md. top court delinks assault, felony murder

By: Steve Lash Daily Record Legal Affairs Writer February 24, 2017

"We hold that, if the assaultive act causing the injury is the same act that causes the victim's death, the assault is merged into the murder and therefore cannot serve as the predicate felony for felony-murder purposes," Judge Irma S. Raker wrote for the Court of Appeals' majority Friday.

ANNAPOLIS – A sharply divided Maryland high court has overturned its 2005 decision permitting a first-degree assault to be a predicate offense for second-degree felony murder if the victim dies.

In its 4-3 decision, the Court of Appeals said Friday a predicate assault must be independent of the victim's death to permit a charge of felony murder. If the assault causes the death, the assault merges with the homicide, ceases to be an independent felony and cannot be linked to felony murder, the high court said in overturning Roary v. State.

With its decision, the high court adopted criminal law's "merger doctrine," which bars prosecutors from pursuing a felony-murder conviction when the "underlying felony is an integral element of the homicide." The court had rejected the merger doctrine in Roary, also a 4-3 decision.

"We hold that, if the assaultive act causing the injury is the same act that causes the victim's death, the assault is merged into the murder and therefore cannot serve as the predicate felony for felony-murder purposes," Judge Irma S. Raker wrote for the majority Friday.

"We realize that this view is inconsistent with Roary v. State," added Raker, who wrote the dissent in Roary. "We therefore overrule that case, insofar as it holds that that the assaultive act constituting willful injury and also causing the victim's death may serve as a predicate felony for felony-murder purposes."

The merger doctrine would apply only to future cases and those currently pending on direct appeal, Raker added.

That the high court overturned its Roary decision is not a total surprise, because the judges last May had specifically requested that counsel for the state and the defendant, Tyshon Leteek Jones, address whether the 2005 decision should be reconsidered, said criminal procedure professor Byron L. Warnken.

It is "very unusual," however, for a court to reverse itself so soon – a mere 12 years – after its original decision, added Warnken, who teaches at the University of Baltimore School of Law and has written a treatise on Maryland criminal law.

The court's decision forecloses prosecutors from pursuing a felony second-degree murder charge against Jones, who still faces trial on use of a firearm in the 2010 death of Julian Kelly in Montgomery County.

Disrespecting precedent

In dissent, Judge Shirley M. Watts assailed the high court for overturning Roary, saying precedent should be respected unless the earlier decision was "clearly wrong and contrary to established principles" or was "rendered archaic and inapplicable to modern society through the passage of time and evolving events."

"This court's holding in Roary was based on sound principles of law, and is as valid today as it was in 2005," Watts wrote. "Roary's specific purpose was to deter violent assaults that result in death,"

First-degree assault was and remains an independent felony that foreseeably causes death and thus can form a predicate offense for second-degree murder, she added.

"Today – 12 years after this court issued Roary in 2005 – deterring violent assaults that result in death is more important than ever," Watts wrote. "Far from archaic, Roary is more beneficial to the public interest than ever before – yet, the majority elects to overrule Roary and strip the state of an important tool in prosecuting homicides."

Without specifically mentioning Raker's role in Roary, Watts stated that the court's majority "essentially adopts the dissenting opinion in Roary – of which the majority of this court in Roary was necessarily aware, and declined to follow."

Warnken, who has written a treatise on Maryland criminal law, said he must now revise his pages discussing Roary as well as class discussions about the now-overturned decision.

Raquel Coombs, a spokeswoman for the Maryland attorney general's office, declined to comment on the high court's decision.

Jones' attorney, Rockville solo practitioner John N. Sharifi, also declined to comment, noting his client's criminal case remains pending in circuit court.

Retrial granted

Jones was among five men accused in the beating, robbery and shooting death of Julian Kelly shortly before midnight on Aug. 20, 2010. He was charged with first-degree murder, second-degree murder with intent to cause grievous bodily injury, armed robbery, robbery and use of a handgun in a crime of violence.

A Montgomery County Circuit Court jury was unable to reach a verdict on the handgun charge, a first-degree assault, but acquitted Jones on all other charges. The state successfully moved for a retrial on the handgun charge, as well as moving forward with a charge of second-degree felony murder.

Jones appealed to the intermediate Court of Special Appeals, which blocked the retrial, prompting the state to seek review by the high court.

Chief Judge Mary Ellen Barbera and Judges Sally D. Adkins and Robert N. McDonald joined the majority opinion by Raker, a retired jurist sitting by special assignment.

Judges Clayton Greene Jr., who wrote the majority opinion in Roary, and Lynne A. Battaglia joined Watts' dissent. Battaglia, a retired judge, was sitting by special assignment.

The Court of Appeals rendered its decision State of Maryland v. Tyshon Leteek Jones, No. 52 September Term 2015.