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Complete With Accessories

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In *Pierson v. Ray, supra,* a group of black clergymen brought suit against a police Court Judge for false arrest and violation of Section 1983. The clergymen had attempted to use a "white only" waiting room in a Jackson, Mississippi bus terminal and were arrested and convicted of violating a state breach of the peace statute. MISS. CODE ANN. 62087.5 (Supp. 1971). The majority found the Police Court Judge absolutely immune from suit under Section 1983, and based its decision on the belief that judicial immunity was a well established principle of common law. Further, the Court found the doctrine firmly entrenched within the legislative history of Section 1 of the Civil Rights Act. 386 U.S. at 553-554.

Justice Douglas severely criticized the majority's reliance on the legislative history of Section 1 of the Civil Rights Act. 386 U.S. at 547, 559-563. Douglas suggested that Congress recognized and accepted the fact that State Court Judges would not be immune from actions based on Section 1 of the Act. The maladministration of justice was due to the impartial administration of law and equity and providing broad immunity would only serve to foster this problem. 386 U.S. at 559.

However, *Pierson v. Ray, supra,* has been the governing rule despite the questionable legislative record. While courts have qualified the immunity doctrine with respect to executive, administrative, and other quasi judicial officers[1], they have consistently upheld judicial immunity as prohibiting Section 1983 suits against judges.

—Roxane N. Sokolove

[1]*See* Schuer v. Rhodes 416 U.S. 232 (1974) where personal representatives of the estates of students who died in the Kent State tragedy brought suit under 42 U.S.C. §1983 against the Governor of Ohio. Chief Justice Berger, after finding the suit not barred by the 11th Amendment, held that state officers had a qualified, not absolute immunity, the degree of qualification "being dependent upon the scope of discretion and responsibilities of the officer and all the circumstances as they reasonably appeared at the time of the action on which liability is sought to be based." 416 U.S. at 247.

Recent Decisions

Complete with Accessories

The Court of Appeals, in the case of *State v. Williamson,* 282 Md. 100, 382 A.2d 588 (1978), has held that an accessory before the fact may be indicted and convicted of first degree murder under the form of indictment prescribed in MD. ANN. CODE, Art 27, §616(a),[1] and that the indictment need not distinguish between principals and accessories in order for the conviction to be upheld.

Joyce Marcine Williamson was convicted by a Baltimore County jury of first degree murder and other charges arising from the death of her husband outside of their home on October 5, 1975. According to the findings of the jury, defendant Williamson hired one Lawrence Merrick to murder her husband; Merrick subsequently beat Mr. Williamson to death in a parked car in the driveway of his home on the date in question. The evidence indicated that following a period of negotiation with someone who ultimately refused to commit the murder defendant, with the assistance of her brother, then

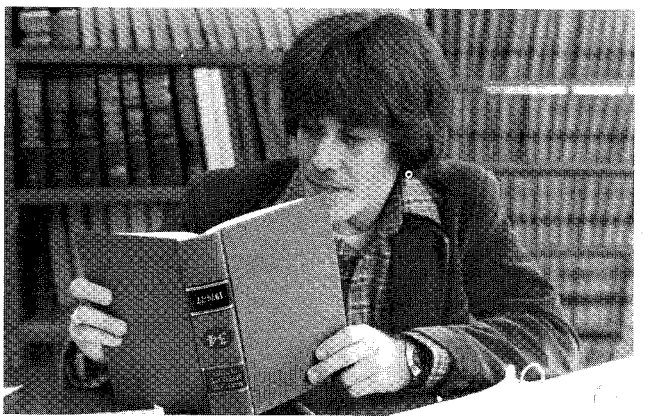

Photo by J.J.R.

arranged for the hiring of Merrick. There was, however, no evidence adduced at trial to indicate that defendant assisted Merrick in any way on the night of the murder, or that she was in a position to aid him in any way, or even that she was awake at the time of the murder. Concluding that there was no constructive presence of the defendant at the scene of the crime, the Court of Special Appeals held that the evidence was insufficient to show that Williamson was a principal in the murder of her husband and reversed the conviction. The issue then presented by the state to the Court of Appeals on a writ of certiorari was whether a defendant can be convicted of first degree murder when he has hired someone else to commit the murder and is therefore an accessory before the fact.

The Court of Appeals held that the abbreviated form of indictment for murder privided for in MD. ANN. CODE, Art. 27, §616 (a) allows for a conviction of murder when proof of either accessoryship or principalship is adduced, and thereby reversed the Court of Special Appeals.

At common law, distinctions were drawn between accessories and principals for reasons which even today remain unclear. A popular suggestion has been made that the doctrine of accessoryship was created by early common law judges in an effort to alleviate, in certain cases, the severity of the rule that all felonies were punishable by death. An accessory before the fact is one who procures, counsels or commands the commission of the criminal offense but is absent from the scene of the crime at the time of its commission. A principal may be of two degrees: a principal in the first degree being one who commits

[1]The section in question reads as follows: *"Where death penalty not sought.*— Except as provided in subsection (b), in any indictment for murder or mansiaughter, or for being an accessory thereto, it shall not be necessary to set forth the manner or means of death. It shall be sufficient to use a formula substantially to the following effect: That A.B., on the. . .day of. . .nineteen hundred and. . .at the county aforesaid, feloniously (wilfully and of deliberately premeditated malice aforethought) did kill (and murder) C.D. against the peace, government and dignity of the State."

the criminal act, and a principal in the second degree being one who, while actually or constructively present, aids or abets the commission of the act but does not himself commit it. It was thus the element of presence or absence which effectively determined whether a given party was to be classified as a principal or as an accessory under the common law. Historically, this accessory-principal distinction benefited those charged as accessories in several ways: (1) accessories were distinguished as such in the indictment and were therefore given notice of the nature and seriousness of the charges against them, (2) accessories, in most cases, were allowed the benefit of clergy and (3) accessories could not be tried until after the principal was convicted.

Although Mrs. Williamson's contention that she could not have been convicted of first degree murder because the state did not establish her constructive presence at the scene of the crime raised the question of the applicability of the common law distinctions between principal and accessory to Maryland case law, the Court of Appeals found it unnecessary to determine whether these common law distinctions are still in effect in Maryland. According to the narrow holding of the court, Mrs. Williamson "having been indicted for the murder of her husband in a form which permitted proof either that she was a principal or an accessory, and the evidence adduced having been sufficient to convict her as an accessory before the fact, there was no error."

The interesting aspect of *Williamson* is not so much the narrow disposition of the case itself, but rather what it might have been had a majority squarely faced those very issues which it successfully avoided. Had the express language of §616 (a) not provided the necessary grounds for upholding Mrs. Williamson's conviction, the Court of Appeals might have been able to take advantage of the opportunity to lift the burdens which the common law distinctions continue to impose upon Maryland criminal courts. As outlined briefly in the concurring opinion to *Williamson*, under this common law view, accessories could be tried only in the jurisdiction where the act of accessoryship was committed, without regard to where the felony itself was committed; if the principal was acquitted or never discovered, the accessory could never be brought to trial; and one charged as a principal cannot be convicted as an accessory if the evidence shows only that he had acted as an accessory before the fact. The opinion suggests as well that the constitutional restraints upon the use of the death penalty in recent years have rendered void the historical foundations upon which the common law distinctions were originally founded. Maryland is indeed the only state which has not modified the common law in some respect; all other jurisdictions have to some extent taken measures (either by statutory enactment or by judicial decision) to erase the restrictions which the common law of parties to crime had imposed upon them. For the most part this has been accomplished without any noticeable detrimental effect on the rights of defendants and to the added benefits of judicial efficiency and, to some extent, simplicity.

There is, however, no indication either in *Williamson* or in any preceding case that the common law rules have been modified in Maryland at all, and it seems, therefore that the doctrine of accessoryship continues to remain the law in Maryland. This will be the case until either legislation or a Court of Appeals decision finally inters this persistent remnant from our legal past. Perhaps the needlessness of the doctrine is best summarized by a passage from Bishop's *Criminal Law* as quoted in the concurring opinion to *Williamson:* "This distinguishing of the accessory before the fact from the principal is a pure technicality. It has no existence either in natural reason or the ordinary doctrines of the law. For in natural reason the procurer of a crime is not chargeable differently from the doer; and a familiar rule of the common law is that what one does through another's agency is regarded as done by himself. . ."

—James F. Kuhn

Licensee, Invitee and Trespasser: Archaic Classes?

In a 5-2 decision, the Court of Appeals decided that the abolition of the common law classifications of invitee, licensee and trespasser in considering the liability of a property owner was not properly preserved for appeal. The majority in *Sherman v. Suburban Trust Company,* 282 Md. 238, 384 A.2d 76 (1978), asserted that they were precluded from considering the question because of Plaintiff's failure to request a jury instruction specifically predicating the tort liability of an owner or occupier of land upon principles of ordinary negligence as opposed to the technical classifications of invitee, licensee, and trespasser. The dissenting opinion, however, asserted that the issue was proper and that the common law distinctions should be abolished.

In this case, the Court of Appeals was confronted with the question of whether the property owner owed a duty to a police officer injured on a nonpublic segment of an owner's premises while in his official capacity.

The plaintiff, a plainclothes policeman on patrol, received a radio call that an attempt was being made to negotiate a forged check at the Suburban Trust Company (defendant). After identifying himself and another to the bank teller, he and his fellow officer were permitted to enter the six by eight foot teller's cage. The teller accidentally dropped the alleged forged check onto the floor. Attempting to pick up the check, the Plaintiff stepped back two or three feet. As he did so the officer struck part of his body on the coin changing machine's scoop arm, which he did not see.

The plaintiff in this case sued the Bank claiming in part that the defendant ". . .failed to give adequate warning of its (the coin changing machine's) placement and further placed it in a negligent position where it could cause injury to individuals. . ."

The plaintiff excepted to the Circuit Court's jury instruction and claimed that a police officer was either an invitee or in a class *sui generis,* and was not a licensee. The plaintiff sought an instruction that would give the Bank an affirmative duty both to excercise ordinary care to keep the premises reasonably safe for him and to refrain from negligence.

According to the present law in Maryland, the liability of a property owner to an injured party is dependent upon whether the latter is an invitee, licensee or trespasser. After the injured party is classified, the courts then apply the appropriate standard of care.

In Maryland, a trespasser is generally one who enters or remains upon land of another without privilege to do so. The trespasser takes the property as he finds it in so far as any alleged defective condition may exist on the property. The possessor of the land owes him only the duty of refraining from wanton or wilfull injury. *Duff v. U.S.,* 171 F.2d 846 (4th Cir. 1949).

A licensee is a person who enters the property with the knowledge and consent of the owner and for the licensee's own