

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on Friday the 8th day of October, 2010.*

George Lavar Riddick, III, Appellant,

against Record No. 092600
Court of Appeals No. 0234-09-1

Commonwealth of Virginia, Appellee.

Upon an appeal from a
judgment rendered by the Court
of Appeals of Virginia.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is no reversible error in the judgment of the Court of Appeals.

George Lavar Riddick, III ("Riddick") was convicted of first degree murder, aggravated malicious wounding, maliciously shooting into an occupied building, two counts of use of a firearm during the commission of a felony, and two counts of wounding in committing a felony. He contends that the Court of Appeals erred when it affirmed his two convictions for violating Code § 18.2-53.1 (use of a firearm in commission of a felony) because his two convictions for violating Code § 18.2-53 (wounding during commission of felony) barred the former due to Code § 19.2-294 and the Double Jeopardy Clause. The Court disagrees.

Code § 19.2-294 "does not apply to simultaneous prosecutions, because only a prior conviction for the violation of an act will bar a later prosecution for the same act." Phillips v. Commonwealth, 257 Va. 548, 552, 514 S.E.2d 340, 342 (1999) (emphasis in original). Thus Code § 19.2-294 does not bar

Riddick's convictions under Code § 18.2-53 or Code § 18.2-53.1 because the convictions, while for identical conduct, were obtained in the same trial.

For Double Jeopardy to bar the convictions, the trial court must have exceeded "its legislative authorization by imposing multiple punishments for the same offense." Coleman v. Commonwealth, 261 Va. 196, 200, 539 S.E.2d 732, 734 (2001) (quoting Blockburger v. United States, 284 U.S. 299, 304 (1932)). Offenses are not "the same" when, viewed in the abstract, each requires proof of an element that the other does not. Id.

Code § 18.2-53 requires a "shooting, stabbing, cutting, or wounding," but not the use of a firearm. Code § 18.2-53.1 does not require "shooting, stabbing, cutting, or wounding," but it does require the use of a firearm or "instrument which [gives] the appearance of having a firing capability." Holloman v. Commonwealth, 221 Va. 196, 198-99, 269 S.E.2d 356, 358 (1980). Therefore, the trial court did not exceed its legislative authorization by convicting Riddick of both charges because the elements of the offenses are different under the Blockburger test.

Accordingly, the Court of Appeals did not err in denying Riddick's petition for appeal. The judgment is affirmed. The appellant shall pay to the Commonwealth of Virginia thirty dollars damages.

This order shall be certified to the Court of Appeals of Virginia and to the Circuit Court of the City of Suffolk.

A Copy,

Teste:



Clerk