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Abraham v. Commonwealth 526 S.E.2d 277 (Va. Ct. App. 2000) DeLaurencio v. Commonwealth No. 2497-98-1, 2000 WL 781297, at *1 (Va. Ct. App. June 20, 2000)

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These two cases offer minimal guidance for capital murder defense in Virginia. *DeLaurencio v. Commonwealth*¹ and *Abraham v. Commonwealth*² are two examples of capital murder cases in which robberies were the predicate offenses and the juries recommended life sentences.³ In *DeLaurencio*, the jury convicted the defendant of robbery and capital murder.⁴ On appeal to the Court of Appeals of Virginia, DeLaurencio contended that (1) the court erred by not striking a juror, and (2) the evidence was insufficient to support the robbery conviction.⁵ The court affirmed all convictions.⁶ The court found specifically that the evidence was sufficient to affirm the robbery conviction, and that the defendant's intent to steal and the killing were sufficiently related to affirm the jury's finding that the killing occurred during the commission of the robbery.⁷ In *Abraham*, the jury similarly convicted the defendant of robbery and capital murder.⁸ On appeal from his convictions, Abraham argued the following: (1) that the evidence supporting his convictions was insufficient; (2) that the trial court should have instructed the jury on voluntary manslaughter; and (3) that certain witnesses should have been excluded because such witnesses'

1. No. 2497-98-1, 2000 WL 781297, at *1 (Va. Ct. App. June 20, 2000).

2. 526 S.E.2d 277 (Va. Ct. App. 2000).

3. *DeLaurencio v. Commonwealth*, No. 2497-98-1, 2000 WL 781297, at *1 (Va. Ct. App. June 20, 2000); *Abraham v. Commonwealth*, 526 S.E.2d 277 (Va. Ct. App. 2000).

4. *DeLaurencio*, 2000 WL 781297, at *1; see VA. CODE ANN. §§ 18.2-58, 18.2-31(4) (Michie 2000). The jury also convicted defendant for use of a firearm in the commission of a felony. *DeLaurencio*, 2000 WL 781297, at *1; see VA. CODE ANN. § 18.2-53.1 (Michie 2000).

5. *DeLaurencio*, 2000 WL 781297, at *2, 4.

6. *Id.*, at *6. On DeLaurencio's challenge to the trial court's refusal to strike a juror, the Court of Appeals of Virginia concluded that the juror's background as a police officer would not preclude him from the required presumption of the defendant's innocence. *Id.*

7. *Id.*, at *5-6.

8. *Abraham*, 526 S.E.2d at 278; see VA. CODE ANN. §§ 18.2-58, 18.2-31 (Michie 2000). The jury also convicted the defendant of car jacking and abduction. *Abraham*, 526 S.E.2d at 278; see VA. CODE ANN. §§ 18.2-58.1, 18.2-48 (Michie 2000).

names and addresses were not filed with the court.⁹ After a brief discussion, the Court of Appeals of Virginia rejected Abraham's four claims.¹⁰ The court ruled that, in the process of killing the victim, Abraham stole an item of clothing from the victim that he knew often contained drugs and money.¹¹ As a result, the court affirmed the conviction for the predicate offense and the capital murder conviction.¹²

At issue in both cases is the relation required between the killing and the predicate offense of robbery in order to make the murder capital.¹³ The *DeLaurencio* court found that the robbery and murder were sufficiently related to sustain a capital murder conviction because the crimes were "interdependent objects of a common criminal design."¹⁴ *DeLaurencio* claimed that he did not kill the victim while committing a robbery.¹⁵ However, the court found that the connection between the robbery and the murder were close enough in time and place for the robbery to serve as a predicate offense.¹⁶ In *Abraham*, the defendant argued that the murder was a response to the victim's threats against the defendant.¹⁷ Abraham owed the victim, his drug dealer, money for drugs.¹⁸ Abraham and the victim

9. *Abraham*, 526 S.E.2d at 278-280; see VA. CODE ANN. § 19.2-267 (Michie 2000) (requiring the prosecutor to file, with the clerk of the court, the names and addresses of witnesses who are summoned by the prosecutor).

10. *Abraham*, 526 S.E.2d at 278.

11. *Id.* at 279. Other witnesses testified that they saw the defendant attack the victim after the initial violence and claimed that the defendant was wearing a red vest, which was later found to belong to the victim. *Id.*

12. *Id.* at 279-80. The court also determined that the evidence confirmed that Abraham's drug use prior to the crimes did not negate the intent required for premeditated murder. *Id.* at 280. Additionally, the pertinent statute did not require barring the testimony of witnesses whose information was not filed properly with the court. *Id.*

13. Robbery is one of the predicate offenses for a capital murder charge in Virginia. See VA. CODE ANN. § 18.2-31(4) (Michie 2000). The establishment of certain felonies as predicate offenses for capital murder convictions is one way in which Virginia has attempted to provide the guidance in imposing the death penalty required by *Gregg*. *Gregg v. Georgia*, 428 U.S. 153, 195 (1976).

14. *DeLaurencio*, 2000 WL 781297, at *6.

15. *Id.* The victim approached his disabled car while the defendant was in the process of stealing the victim's car radio speakers. *DeLaurencio* exited the vehicle and shot the victim. *DeLaurencio* left briefly and then returned to the car and stole the victim's wallet. *Id.*, at *1. The grand jury indictment charged that *DeLaurencio* "did willfully, deliberately, and with premeditation, kill . . . during the commission of robbery or attempted robbery." *Id.*, at *5. The trial judge allowed the defendant to choose whether he wanted the charge of robbery (of the victim's wallet) or attempted robbery (of the victim's car speakers) to be considered by the jury as the predicate offense for the capital murder. *DeLaurencio* chose the robbery instruction. This decision of the trial judge was not considered in the appeal. *Id.*

16. *Id.*, at *6.

17. *Abraham*, 526 S.E.2d at 280.

18. *Id.* at 278.

drove in separate cars to a credit union to get the money.¹⁹ Upon their arrival, Abraham entered the victim's car, beat him with a metal rod, and drove away with the victim in the victim's car.²⁰ Thus, Abraham might have argued that he did not have intent to steal when the killings occurred. *DeLaurencio* and *Abraham* indicate that the temporal and spacial proximity between the robbery and the killing may determine whether the required nexus exists between the two offenses to make the murder capital. If the court finds that the killing and the robbery were not two distinct events, the court will find that a sufficient nexus exists. The required nexus may be satisfied if the robbery and murder occurred within a continuous series of events.²¹

It is notable that these two cases, in which the nexus is arguably tenuous, resulted in life sentences rather than sentences of death. If a jury recommends a sentence of death, section 19.2-264.5 of the Virginia Code requires the trial court to review the case before imposing the sentence. The court, upon a showing of "good cause," may impose a sentence of life imprisonment rather than the sentence of death. "Good cause" should include disproportionality.²² *DeLaurencio* and *Abraham* indicate that a tenuous nexus between the robbery and murder results in a life sentence. This weak nexus may constitute "good cause" for imposing a sentence of life imprisonment. Therefore, counsel should argue that a sentence of life imprisonment rather than death is required when there is an arguably weak connection between the murder and robbery.²³

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19. *Id.* at 278-79.

20. *Id.* at 279.

21. *DeLaurencio*, 2000 WL 781297, at *6; see *Quesinberry v. Commonwealth*, 402 S.E.2d 218, 224 (Va. 1991) (rejecting the argument that a robbery cannot serve as a predicate for capital murder when the robbery occurs before any acts of violence against the victim).

22. See VA. CODE ANN. § 19.2-264.5 (Michie 2000); Kelly E.P. Bennett, *Proportionality Review: The Historical Application and Deficiencies*, 12 CAP. DEF. J. 103 (1999) (arguing that proportionality review is within "good cause").

23. Trial counsel should also argue in the Supreme Court of Virginia that a weak nexus between the murder and robbery requires setting aside a sentence of death and imposing a life sentence. See VA. CODE ANN. § 17.1-313 (Michie 2000) ("A sentence of death, upon the judgment thereon becoming final in the circuit court, shall be reviewed on the record by the Supreme Court.").

