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# WATKINS v. COMMONWEALTH 1989 Va. Lexis 132 Supreme Court of Virginia September 22, 1989

**WATKINS v. COMMONWEALTH**
**1989 Va. Lexis 132**
**Supreme Court of Virginia**
**September 22, 1989**

## FACTS

Ronald Watkins, a black defendant, was convicted by jury of robbery, Va. Code Ann. §18.2-58, and of capital murder in the commission of robbery while armed with a deadly weapon, Va. Code Ann. §18.2-31 (d). Watkins had formerly worked for the victim, William Martin McCauley, who operated a business called Allied Services in a shopping center in Danville. Upon his arrest, Watkins voluntarily confessed to committing both the robbery and the murder. He stated to the police that he knew substantial amounts of cash were kept on the premises and that the "help ... would get off at 5:00 p.m." He than admitted that he was at Allied Services on May 26, 1988, that he took money from both the filing cabinet drawer and the cash register and that he stabbed McCauley and "cut his throat."

At the end of the first stage of the bifurcated trial, the jury found Watkins guilty of capital murder and robbery and sentenced him to life imprisonment for the robbery conviction. At the penalty stage, the jury heard evidence of aggravating and mitigating circumstances, and thereafter fixed Watkins' punishment at death based on both the "future dangerousness" of the defendant and the "vileness" of the crime. The Supreme Court of Virginia affirmed the convictions and sentence, finding no error in the record.

## HOLDING

*a) Challenges to the array:*

The jury impanelled to hear Watkins' case consisted of one black and eleven white members. The defense claimed that the jury array, from which the petit jury was chosen, violated defendant's Fourteenth Amendment right to the Equal Protection of the Law which protects defendants from being subjected to irrational and discriminatory classifications. Watkins further claimed that the array violated his Sixth Amendment right to a fair and impartial jury because the array did not represent a fair cross section of the community. The defense moved to discharge the venire on the ground that the disparity between the minority representation in the venire and in the community was evidence of a policy of systematic exclusion of the minority which violates both the Fourteenth and the Sixth Amendment protections. In particular, Watkins claimed that minorities register to vote in a lower proportion than the general population, and that the jury commissioner's reliance on the use of the list of registered voters to form the jury array makes out a prima facie case of systematic exclusion, under the Sixth Amendment, which the Commonwealth failed to rebut.

The Supreme Court of Virginia, in addressing Watkins' Fourteenth Amendment claim, denied it and stated that, "there is no requirement that the petit jury actually chosen must mirror the racial balance of the community...All that is required is a fair selection system which does not systematically exclude any distinctive group in the community." *Watkins v. Commonwealth*, ___ Va. ___, (1989). The court continued that, "[i]n order to make out a prima facie case of systematic exclusion, a litigant must show consistent under-representation of a distinctive group on juries in the community over a period of time. Such under-representation in a particular case is not sufficient." *Id.* at ___. Concluding that Watkins failed to make a showing of historic under-representation, the court held that the jury array did not violate Watkins' Constitutional rights. The court did not specifically address Watkins' Sixth Amendment claim.

*b) Sentence based on racial prejudice:*

A sentence will be deemed unconstitutional if it was based on purposeful discrimination. *McCleskey v. Kemp*, 481 U.S. 279, 292 (1987). Watkins claimed a constitutionally unacceptable risk that his death sentence was influenced by racial prejudice. To support this contention, Watkins provided evidence that of the five defendants tried for capital murder in Danville since 1980, four of those defendants were black, and were ultimately sentenced to death. The fifth defendant was white and was sentenced to life imprisonment. Watkins claimed that this evidence tends to show that racial prejudice influenced the penalty imposed by the jury in his case. The court held that the evidence was wholly insufficient to support this claim because Watkins failed to prove that the races of the victims made any difference in their sentences and that there were any factors indicating that the jurors in his case acted with any discriminatory purpose.

*c) Corroboration of confession:*

Watkins claimed that the trial court erred when it refused to instruct the jury that a conviction cannot be based solely on the uncorroborated confession of the defendant. It is widely accepted that an accused cannot be convicted of a crime solely on his uncorroborated extrajudicial admission or confession. Rather, the corpus delicti must also be corroborated. *Cleek v. Commonwealth*, 165 Va. 697, 698, 181 S.E. 359, 360 (1935). However, as in this case, where the accused has fully confessed the crime, only slight corroborative evidence is necessary to establish the corpus delicti. *Clozza v. Commonwealth*, 228 Va. 124, 133, 321 S.E.2d 273, 279 (1984), *cert. denied*, 469 U.S. 1230 (1985). As a matter of law, the trial court ruled that Watkins' confession was sufficiently corroborated by the circumstantial evidence presented. The Supreme Court of Virginia upheld this determination and agreed that denying Watkins' jury instruction was appropriate. "After the court had determined, as a matter of law, that the confessions were sufficiently corroborated to go to the jury, granting a jury instruction describing them as 'uncorroborated', or requiring the jury to decide whether they were corroborated or not would indeed be incongruous." *Watkins v. Commonwealth*, ___ Va. at ___.

Justice Whiting dissented to this part of the opinion because the trial court had not allowed the jury to decide whether the corpus delicti had indeed been established. He stated that "a defendant's right to have the jury pass upon the sufficiency of the proof of all elements of the crime is ... a due process right protected by the Fourteenth Amendment." *Id.* Justice Whiting also based his dissent on two prior Virginia Supreme Court cases which he believed implicitly held that the issue whether the corpus delicti has been established was for the jury to decide. *See Plymale v. Commonwealth*, 195 Va. 582, 597, 79 S.E.2d 610, 618 (1954); *Wheeler v. Commonwealth*, 192 Va. 665, 671, 66 S.E.2d 605, 608 (1951).

*d) Parole eligibility:*

Watkins further claimed that the trial court erred when it failed to allow his defense attorney to discuss with the jury Watkins' parole eligibility so that the jury would know Watkins would be in the penitentiary for a minimum of twenty years. The court stated that, "our decisions have consistently foreclosed evidence or instructions informing the jury of a defendant's parole eligibility in the event of a life sentence." *Watkins v. Commonwealth*, ___ Va. at ___.

*e) Unadjudicated acts of misconduct:*

The Virginia Supreme Court has held that unadjudicated acts of prior criminal conduct could be used to prove the "future dangerousness" prong in the penalty phase of a capital trial. *O'Dell v. Commonwealth*, 234 Va. 672, 699-700, 363 S.E.2d 491, 506-507 (1988). On appeal, however, Watkins claimed that the use of prior unadjudicated criminal conduct to prove "future dangerousness" is unconstitutional unless the court specifies the standard of proof governing the establishment of such conduct. Because Watkins failed to preserve this issue at trial, the court would not consider it on appeal.

## ANALYSIS

*a) Challenges to the array:*

The Supreme Court of Virginia, in addressing Watkins' challenge to the jury array, correctly stated the principle that a defendant must make a showing that a distinctive group has been consistently under-represented on juries in the community over a period of time in order to sustain a Fourteenth Amendment Equal Protection violation. However, the court made no mention of a defendant's Sixth Amendment right to a fair and impartial jury based on a fair cross section of the community. Although the court was correct in its assertion that a defendant has no right to have a petit jury mirror the community, the defendant is entitled to a fair opportunity to have such a jury by being afforded an array from which no "cognizable" group has been excluded. Under-representation is *prima facie* evidence of systematic exclusion. Under-representation over a period of time is not a necessary component of this Sixth Amendment claim. Watkins made a showing that there was an under-representation of blacks on the jury array, and alleged that this under-representation was due to a systematic exclusion brought about by the jury commissioner's reliance on voter registration lists to form the jury array. This evidence constituted *prima facie* proof that a Sixth Amendment violation occurred. At this point, the prosecution was under a duty to rebut this claim by proving that a significant governmental interest justified the imbalance. The court, rather than the prosecution provided a rebuttal to the claim.

*b) Sentence based on racial prejudice:*

In *McCleskey v. Kemp, supra,* the court recognized that there could be a constitutionally unacceptable risk of racial bias in sentencing. It found however, that even assuming validity of a *statewide* study indicating that blacks who killed whites were significantly more likely to be sentenced to death, McCleskey had not presented evidence of the possibility of racism in *his* trial.

Watkins undertook to demonstrate that risk in his trial by proffer of the recent actions of Danville juries in capital cases. The Supreme Court of Virginia found his showing insufficient. The court invites, however, defense counsel to make more detailed showings. Counsel should, in a proper case, request the time and resources necessary to make the showing suggested by the Court. A proper case might be one, like *Watkins*, with a black defendant and a white victim, which arises in a venue with a history of racial discrimination.

*c) Corroboration of confession:*

The correctness of determination of this issue depends on the interpretation of *In re Winship*, 397 U.S. 358, 90 S. Ct 1068, 25 L. Ed. 2d 368 (1970), in which the United States Supreme Court held that the prosecution has the burden of proving each and every element of the crime with which the defendant is charged. In this case, the court's holding, that it is a question of law for the court to decide whether a confession has been sufficiently corroborated by the prosecution, takes away from the jury the responsibility to find every element of the offense.

*d) Parole eligibility:*

Evidence of defendant's parole eligibility is clearly relevant to the mitigation of his penalty. Not only could this information weaken the evidence of his future dangerousness to the community, but it is also non-statutory mitigation evidence itself. This type of claim may eventually win the approval of the courts, and should continue to be asserted through proposed jury instructions.

*e) Unadjudicated acts of misconduct:*

Finally, it is once again necessary to remind all attorneys of the importance of preserving for appeal their objections to the rulings of the trial court, and thereafter to raise those issues on appeal. The constitutionality of using future dangerousness as an aggravating factor has been specifically upheld by the United States Supreme Court. *Barefoot v. Estelle*, 463 U.S. 880, 887, 103 S. Ct. 3383, 3391, 77 L. Ed. 2d 1090, 1097 (1983). Unanswered questions remain, however, about the procedures for establishing that factor in a given case. Those claims not properly preserved at trial or raised on appeal may have been the ones which would have turned a death sentence into a term of life imprisonment.

Summary and analysis by: Catherine M. Hobart

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**BUCHANAN v. COMMONWEALTH**
**1989 WL 109169 (Va.)**
**Supreme Court of Virginia**
**No. 890107, 890108**
**September 22, 1989**

## FACTS

Douglas McArthur Buchanan was convicted of capital murder under Va. Code Ann. §18.2-31(7) for the murder of his father in the same transaction in which he murdered his two half-brothers and his step-mother. The Commonwealth had charged Buchanan with 5 different combinations of these murders in three different indictments. Buchanan also was convicted of first degree murder for all four murders, Va. Code Ann. §18.2-32, and of use of a firearm in the commission of a felony for each murder under Va. Code Ann. §18.2-53.1. Buchanan was sentenced to death for the capital murder conviction, four terms of life imprisonment for the first degree murder convictions and a total of 14 years for the firearms convictions.

All the murders took place within a two-hour time frame in the family's home. Buchanan killed his father first by shooting him with a .22-calibre rifle. Fifteen minutes later, his brothers arrived. Buchanan shot the first brother as the boy came in the door. He shot the second brother in the yard, but the boy did not die. Buchanan helped the brother to the house, but then stabbed him once inside. Buchanan waited inside the house for his step-mother and killed her with the knife once she arrived.

Buchanan raised several issues on appeal. First, Buchanan complained that the capital murder indictments failed to inform him