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Williams v. Commonwealth 528 S.E.2d 166 (Va. Ct. App. 2000)

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Williams v. Commonwealth

528 S.E.2d 166 (Va. Ct. App. 2000)

I. Facts

During the early morning of December 1, 1996, Vareck Griffin ("Griffin") was shot and killed in a Norfolk, Virginia apartment where he and others sold cocaine. The police arrested Danyel Harris ("Harris") five and one-half months after Griffin's death and questioned him regarding an unrelated homicide. During the interrogation, Harris confessed to robbing Griffin and claimed that Hurcus Jerome Williams ("Williams") killed Griffin.¹

A grand jury indicted Williams on one count of capital murder in the commission of a robbery.² At Williams's trial, Harris asserted his Fifth Amendment privilege against self-incrimination and refused to testify.³ The trial judge admitted Harris's confession over Williams's objection that it violated Williams's Sixth Amendment right to confront witnesses against him.⁴ At the conclusion of the trial, the judge convicted Williams of all charges and sentenced him to life imprisonment.⁵ On appeal to the Court of Appeals of Virginia, Williams argued the following: (1) that the judge erred by admitting into evidence the confession of an accomplice whose testimony could not be cross-examined; and (2) that the judge erred by withholding the confession from Williams's counsel before finding the testimony admissible.⁶ A panel of the court affirmed the convictions.⁷ The court then reviewed the panel decision en banc.⁸

II. Holding

The court reversed Williams's convictions and remanded for a new trial.⁹ The court determined that the trial judge's admission of Harris's confession was not harmless error beyond a reasonable doubt.¹⁰

1. Williams v. Commonwealth, 528 S.E.2d 166, 168 (Va. Ct. App. 2000).

2. The grand jury also indicted Williams on charges of robbery, the use of a firearm in commission of a robbery, and use of a firearm in commission of capital murder. *Id.* at 168; see VA. CODE ANN. § 18.2-31 (Michie 2000).

3. Williams, 528 S.E.2d at 168; see U.S. CONST. amend. V.

4. Williams, 528 S.E.2d at 168; see U.S. CONST. amend. VI.

5. Williams v. Commonwealth, 517 S.E.2d 246, 247 (Va. Ct. App. 1999).

6. Williams, 528 S.E.2d at 167.

7. Williams, 517 S.E.2d at 247.

8. Williams, 528 S.E.2d at 167-68.

9. *Id.* at 172.

10. *Id.* The court did not address whether the trial court judge's refusal to allow defense counsel an opportunity to review Harris's confession before ruling on admissibility

III. Analysis / Application in Virginia

A. Lilly and Harmless Error Review

In *Lilly v. Virginia*,¹¹ as in *Williams*'s case, the confession admitted was supposedly against the declarant's penal interest.¹² However, the *Lilly* Court ruled that the fact that a confession may incriminate the declarant does not mean that it is automatically excepted from the Confrontation Clause.¹³ In *Williams*, the Commonwealth conceded that the judge's admission of Harris's confession violated the Confrontation Clause.¹⁴ However, the Commonwealth argued that the trial judge's admission of Harris's confession was harmless error.¹⁵ The court acknowledged that a violation of the Confrontation Clause might be harmless error.¹⁶ To prove that the error is harmless, the party who benefits from the admission of evidence must prove beyond a reasonable doubt that the evidence did not contribute to the verdict.¹⁷ The court stressed that the standard requires more from the Commonwealth than a sufficiency of the evidence analysis.¹⁸ A reviewing court must find that there is no reasonable possibility that the decision resulted from the erroneously admitted evidence.¹⁹ Additionally, the analysis is done "assuming that the damaging potential of the [evidence] were fully realized."²⁰

In order to convict *Williams* of capital murder, the Commonwealth was required to prove the murder, robbery, and a causal connection linking

was harmless error because such a refusal will not happen if Harris is retried. *Id.* at 168.

11. 527 U.S. 116 (1999).

12. *Lilly v. Virginia*, 527 U.S. 116, 121 (1999) (holding that admission of accomplice confessions that shift blame to the defendant violates the Confrontation Clause of the Sixth Amendment when the defendant does not have the opportunity to cross-examine the accomplice). For a more detailed discussion of *Lilly*, see Kimberly A. Orem, Case Note, 12 CAP. DEF. J. 157 (1999) (analyzing *Lilly v. Virginia*, 527 U.S. 116 (1999)).

13. *Lilly*, 527 U.S. at 134.

14. *Williams*, 528 S.E.2d at 168. In *Lilly*, the Court qualified statements that are "against the penal interest" of the declarant as "inherently unreliable" when they tend to shift blame from the declarant to the defendant. *Lilly*, 527 U.S. at 131-34.

15. *Williams*, 528 S.E.2d at 168.

16. *Id.*; see *Delaware v. Van Arsdall*, 475 U.S. 673, 684 (1986) (finding that a defendant has the right to inquire into bias resulting from state compensation for witness and that confrontation clause error is subject to harmless error review).

17. *Williams*, 528 S.E.2d at 168 (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967) (finding that harmless error must be proven beyond a reasonable doubt)).

18. *Id.* at 169 (quoting *Hooker v. Commonwealth*, 418 S.E.2d 343, 345 (Va. Ct. App. 1992)).

19. *Id.*

20. *Id.* (quoting *Van Arsdall*, 475 U.S. at 684).

the two crimes.²¹ The court reviewed the following factors to determine whether the erroneous admission of evidence constitutes harmless error: (1) the importance of the testimony to the Commonwealth's case; (2) whether the testimony was cumulative; (3) whether the testimony could be corroborated or contradicted by other evidence; and (4) the strength of the case.²² Harris's confession was essential to the case against Williams.²³ Without Harris's testimony, there is no evidence linking the robbery and murder.²⁴ Additionally, Harris's confession was not cumulative of the other witnesses' testimony.²⁵ The other testimony only linked Williams to murder, not to robbery. Finally, the court noted the absence of corroborating physical evidence tying Williams to the crime scene.²⁶

The court emphasized in its opinion the absence of any testimony, other than Harris's confession, indicating that a robbery occurred or that robbery was causally linked to the murder.²⁷ The evidence showed that the trier of fact recorded in his notes the absence of evidence proving a robbery after the other witnesses had already testified, but before Harris's confession was entered into evidence.²⁸ Also, the court noted the effect that such testimony, against the declarant's penal interest, can have on other evidence.²⁹ While the other testimony standing alone may not have been deemed credible, supporting evidence by an actor involved in the crime could have increased the validity of the testimony.³⁰ Stressing the weakness of the evidence, the court doubted whether the conviction would even pass a sufficiency of the evidence test.³¹ As a result, the court concluded that it

21. *Id.*; see VA. CODE ANN. § 18.2-31(4) (Michie 2000).

22. *Williams*, 528 S.E.2d at 169 (citing *Delaware v. Van Arsdall*, 475 U.S. 673, 684 (1986)).

23. *Id.*

24. *Id.* at 170.

25. *Id.* The testimony of Jesse Keene established neither the identity of the triggerman, nor the occurrence of a robbery, the predicate felony for the capital murder conviction. *Id.* at 170. The testimony of Jason Carter, who claimed to have overheard Williams converse about the Griffin killing in jail, did not identify the triggerman or any evidence required to prove a robbery. *Id.* at 171. Finally, Thomas Liggins testified that Williams admitted to shooting somebody. However, Liggins's testimony did not establish the victim's identity, the location of the crime, or the occurrence of a robbery. Furthermore, Liggins agreed to testify for the Commonwealth in return for a suspended sentence on a felony charge and other compensation. *Id.*

26. *Id.* at 170 (quoting *Lilly v. Commonwealth*, 523 S.E.2d 208, 209 (Va. 1999)).

27. *Id.*

28. *Id.* at 172.

29. *Id.* at 171-72.

30. *Id.* at 172.

31. *Id.* at 170.

was unable to find, beyond a reasonable doubt, that the confession did not contribute to Williams's verdict.³²

B. Implications for Virginia Capital Practice

In addition to affirming *Lilly's* holding that accomplice confessions that shift blame to the defendant must be subject to cross-examination, *Williams* demonstrates the standard of review that a court will employ to determine whether a Confrontation Clause violation was harmless error. Defense counsel should remind the court that harmless error review is not a sufficiency of the evidence test.³³ The defense need not show that exclusion of the erroneously admitted evidence would have changed the verdict. It is sufficient to argue that inclusion of improper evidence affected the trier of fact's decision. Unless the court can find beyond a reasonable doubt that the erroneously admitted testimony did not contribute to the conviction, the defendant is entitled to a new trial.³⁴

At trial, when objecting to the admission of a non-testifying co-defendant's statement, defense counsel should argue that such testimony violates the Confrontation Clause of the Sixth Amendment.³⁵ The defense should stress that admissibility of this hearsay evidence would require "particularized guarantees of trustworthiness."³⁶ Counsel should also add that it is unlikely that the presumption against admission of the non-testifying co-defendant's statement will be overcome and that appellate courts will not defer to the trial court's findings.³⁷

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32. *Id.* at 171.

33. *Id.* at 168-69.

34. *See id.* at 172.

35. *See* U.S. CONST. amend. VI; *see also Lilly v. Virginia*, 527 U.S. 116, 121 (1999).

36. *Lilly*, 527 U.S. at 137-38 (citation omitted).

37. *See id.* at 136-37.

CASE NOTE:

Case of Interest
