

SUPREME COURT OF WISCONSIN

CASE No.: 00-3065-CR

COMPLETE TITLE:

State of Wisconsin,
Plaintiff-Respondent,
v.
Luther Williams, III,
Defendant-Appellant.

MOTION FOR RECONSIDERATION

2002 WI 58

Reported at: 253 Wis. 2d 99, 644 N.W.2d 919

OPINION FILED: October 24, 2002

SUBMITTED ON BRIEFS:

ORAL ARGUMENT:

SOURCE OF APPEAL:

COURT:

COUNTY:

JUDGE:

JUSTICES:

CONCURRED:

DISSENTED:

NOT PARTICIPATING:

ATTORNEYS:

2002 WI 118

NOTICE

This opinion is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 00-3065-CR
(L.C. No. 99 CF 793)

STATE OF WISCONSIN

:

IN SUPREME COURT

State of Wisconsin,

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Defendant-Appellant.

FILED

OCT 24, 2002

Cornelia G. Clark
Clerk of Supreme Court

MOTION for reconsideration. *Reconsideration denied.*

¶1 PER CURIAM. The State of Wisconsin moves the court to reconsider its opinion in State v. Luther Williams, III, 2002 WI 58, 253 Wis. 2d 99, 644 N.W.2d 919. Essentially, the State seeks clarification of the standard to be employed when reviewing a claim that inadmissible hearsay violated the defendant's right of confrontation.

¶2 To clarify the Williams opinion, we now modify ¶33 to read as follows:

¶33 The threshold question in examining whether a defendant's right to confrontation is violated by the admission of hearsay evidence is whether that evidence is admissible under the rules of evidence. State v. Bauer, 109 Wis. 2d 204, 210, 325 N.W.2d 857 (1982).

If the evidence does not fit within a recognized hearsay exception, it must be excluded. Id. Only after it is established that the evidence fits within a recognized hearsay exception or was admitted erroneously does it become necessary to consider confrontation. Bruton v. United States, 391 U.S. 123, 137 (1968); Bauer, 109 Wis. 2d at 210. Here, we determine that the lab report does not fit within the business records hearsay exception as the State asserts, but the admission was harmless error. Thus, we do not reach this confrontation issue because a determination of a Confrontation Clause violation does not result in automatic reversal, but rather is subject to harmless error analysis. Delaware v. Van Arsdale, 475 U.S. 673, 684 (1986). Even if Williams' right to confrontation was violated, the violation was harmless error.

¶3 The motion for reconsideration is denied without costs.

