

**IN THE  
COURT OF APPEALS OF VIRGINIA**

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**RECORD NO. 1926-08-4**

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**JOANN WILLIAMS,  
*Appellant***

**v.**

**COMMONWEALTH OF VIRGINIA,  
*Respondent***

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**BRIEF IN OPPOSITION**

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**v.**

**COMMONWEALTH OF VIRGINIA,  
Respondent**

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**BRIEF FOR THE COMMONWEALTH**

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**STATEMENT OF THE CASE**

Petitioner Joann Williams (Williams) is appealing her April 3, 2008 conviction in Prince William County Circuit Court for Felony Abuse and Neglect of an Incapacitated Adult in violation of Virginia Code § 18.2-369(B). Williams was charged with abuse and neglect, obtaining money by false pretense Code § 18.2-178, and five counts of false statement in application for payment in violation of Code § 32.1-314.<sup>1</sup> Williams was

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<sup>1</sup> The Commonwealth's motion to *nolle prosequere* two counts of Virginia Code § 32.1-314 was granted at the beginning of the second day of trial. (1/8/2008 Tr. 4-5).

tried by the court, sitting without a jury, on January 7-8, 2008. The court convicted her of felony abuse and neglect of an incapacitated adult resulting in serious bodily injury, and acquitted her of the remaining charges. On April 3, 2008, the court sentenced Williams to 4 years in prison, with 3 years suspended.

### **QUESTIONS PRESENTED**

- I. WHETHER WILLIAMS, Mr. FURRY'S PERSONAL CARE AIDE, IS A "RESPONSIBLE PARTY" WITHIN THE MEANING OF VIRGINIA CODE § 18.2-369.**
- II. WHETHER THE EVIDENCE WAS SUFFICIENT TO SUPPORT WILLIAMS' CONVICTION FOR FELONY ABUSE AND NEGLECT.**

### **STATEMENT OF FACTS**

During the summer of 2003, Sierra Home Health Care (Sierra) employed Williams for approximately four months. (Tr. 75).<sup>2</sup> Williams' title was home health aide and she had a background in home health care. (Tr. 75, 77). While employed by Sierra, Williams was responsible for light house

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<sup>2</sup> Unless otherwise indicated, all references to the trial transcript refer to the January 7, 2008 proceedings and are designated as follows: Tr. \_\_\_.

cleaning, toileting, preparing meals and bathing patients.<sup>3</sup> (Tr. 76, 78). Williams began to care for Charles Furry (Mr. Furry) in May or June of 2003. (Tr. 76). At the time, Mr. Furry was 55 years of age. (Tr. 43, 132). Except for one weekend during the time Williams cared for Mr. Furry, Mr. Furry was Williams' only patient. (Tr. 76).

When Williams began to care for Mr. Furry, Mr. Furry "needed a walker to get around," and he could communicate by nodding his head yes or no and smiling. (Tr. 77). Williams was the only person who provided Mr. Furry with support or care. (Tr. 77). Williams cared for Mr. Furry four to five hours per day, five days per week, Monday through Friday, although Williams occasionally worked on Saturday and Sunday. (Tr. 78). In order to record the services provided to Mr. Furry, Williams prepared an aide sheet. (Tr. 78). At the end of each week Williams signed the aide sheet and submitted the sheet to Sierra in order to get her paycheck. (Tr. 78-79, 83). Virginia Medicaid employee Christine Elliott also testified that the aide "providing services to the patient completes these aide records and then they are signed by the aid [sic], as well as that patient to verify services were provided." (Tr. 233). Sierra paid Williams with both checks and cash.

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<sup>3</sup> Virginia Medicaid employee Christine Elliot, a registered nurse, testified that an aide's duties included "bathing, dressing, toileting, eating or feeding, transferring, walking and light housekeeping." (Tr. 243, 246).

(Tr. 79). Sierra used the aide records to bill Virginia Medicaid.<sup>4</sup> (Tr. 233-235).

Beginning in August, Williams noticed that Mr. Furry began to deteriorate. (Tr. 84). Specifically, Mr. Furry began falling. (Tr. 84). Furthermore, Williams observed redness and sores on Mr. Furry's feet, which were oozing and bleeding. (Tr. 84). Williams thought that Mr. Furry had suffered a mild stroke. (Tr. 84).

On August 21, 2003, Williams arrived at Mr. Furry's apartment at 9 a.m. (Tr. 86). Williams observed Mr. Furry sitting in his chair, and noted he had soiled himself and "drooled down his front to the point where he soaked himself." (Tr. 86). Williams left Mr. Furry at approximately 1 p.m. (Tr. 86).

During her employment with Sierra, Williams took Mr. Furry to see a medical doctor, specifically a psychiatrist, on only one occasion. (Tr. 85, 204). Williams never called 911 emergency services.<sup>5</sup> (Tr. 85).

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<sup>4</sup> Medicaid paid over \$4,000 to Sierra for Williams to care for Mr. Furry for the period from June 20, 2003 to August 21, 2003. (Tr. 244-245).

<sup>5</sup> During Williams' interview with Medicaid Fraud Investigator Dale Bird, Williams stated that if Mr. Furry got to a point where she felt that Mr. Furry was in danger or needed help, that Williams would have called 911. (Tr. 85).



On August 21, 2003 paramedic Garnett Edward Hinson (Hinson) was called to the residence of Mr. Furry. (Tr. 33). Hinson had been employed as a paramedic for several years with the Prince William County Fire and Rescue Department. (Tr. 32, 54). Hinson arrived at Mr. Furry's apartment at 3:52 p.m. (Tr.34). After receiving a key from the apartment office, Hinson entered Mr. Furry's apartment. (Tr. 35-36).

When Hinson entered the apartment, he discovered Mr. Furry alone. (Tr. 35, 63). The apartment smelled of cat urine. (Tr. 36). There were also cat feces on the floor, "at least ten piles." (Tr. 38). Mr. Furry's kitchen contained trash, dirty dishes, pots and pans. (Tr. 36-38). The apartment was cluttered and very unsanitary. (Tr. 37, 262-263). Mr. Furry was sitting upright in a recliner with his head cocked to the left hand side and his tongue hanging out.<sup>6</sup> (Tr. 38-39). Mr. Furry's recliner was saturated in urine. (Tr. 46). Hinson described Mr. Furry's condition as non-ambulatory, completely dependent on care. (Tr. 43-44). Mr. Furry could not speak, although he could nod his head yes or no. (Tr. 44).

Hinson stated that Mr. Furry's shirt was saturated in drool and his shorts were saturated with urine. (Tr. 39). Instead of the original white

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<sup>6</sup> The Commonwealth moved into evidence photographs of Mr. Furry and his apartment taken on August 21, 2003, specifically, Exhibits 1-7 and 19. (Tr. 42-64, 263-264).

color, Mr. Furry's socks were black, green and brown. (Tr. 39). Because of excess fluid in his legs, Mr. Furry's legs were "weeping" through his pores. (Tr. 39). Mr. Furry acknowledged that he was in pain. (Tr. 40).

Hinson removed Mr. Furry's socks revealing hundreds of maggots on each foot. (Tr. 40). Mr. Furry's feet and legs were swollen with open sores. (Tr. 40-41, 50-51, 282-287). Mr. Furry's buttocks contained a bed sore, also known as a decubitus ulcer, which had "been there for a while." (Tr. 53). Hinson described Mr. Furry's bedsore as a serious injury. (Tr. 59). Upon examination, Hinson determined that no care or treatment had been provided to the bed sore. (Tr. 59-60). Furthermore, there was no evidence that Mr. Furry's feet had been cleaned or bathed. (Tr. 60).

Shortly thereafter, Hinson transported Mr. Furry to the emergency room. (Tr. 41). Before emergency room personnel could provide medical treatment, however, they spent thirty to forty-five minutes decontaminating Mr. Furry.(Tr. 41-42).

Also on August 21, 2003, Dr. Heydarian ("Heydarian") examined Mr. Furry. (Tr. 129-130). Heydarian discovered multiple wounds on Mr. Furry's lower extremities, including a stage three decubitus ulcer.<sup>7</sup> (Tr. 130, 153).

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<sup>7</sup> Dr. Heydarian testified that stage three decubitus ulcers involve tissue destruction involving the skin and subcutaneous tissue all the way to the muscle. (Tr. 143).

Heydarian described Mr. Furry's hygiene as "very poor." (Tr. 130, 141-142). Mr. Furry's wounds on his buttocks and feet were infected with a staphylococcus aureus infection. (Tr. 130, 136, 148, 185). Heydarian noted that Mr. Furry suffered from multiple medical problems, including Schizophrenia, and chronic obstructive pulmonary disease. (Tr. 132). Mr. Furry also suffered from ALS, sometimes known as Lou Gehrig's disease, leaving Mr. Furry with minimal motor control and unable to speak. (Tr. 132-134, 190-191). Mr. Furry was placed on intravenous antibiotics and hospitalized for about one week. (Tr. 139-140). In addition, a gastric tube was installed because Mr. Furry was unable to swallow or chew. (Tr. 146).

Heydarian testified that Mr. Furry's condition was inconsistent with someone who had been bathed, changed, or regularly turned or moved. (Tr.141-142, 147-148). Heydarian further testified that both Mr. Furry's foot infection and decubitus ulcer posed a significant threat to Mr. Furry's health. (Tr. 136, 138, 139, 148). Finally, Heydarian asserted that based on his expert opinion, Mr. Furry's bed sore had been developing for about 1 to 2 months. (Tr. 153, 189). Officer Junger, an expert in wound morphology, also concluded that Mr. Furry's feet were infested with maggots for a minimum of four to seven days. (Tr. 273-295).

## ARGUMENT

### **I. THE EVIDENCE AT TRIAL SUPPORTED THE TRIAL COURT'S FINDING THAT WILLIAMS WAS A "RESPONSIBLE PARTY" WITHIN THE MEANING OF CODE § 18.2-369.**

Williams argues in her petition that the in order for a person to be a responsible party under Code § 18.2-369 there must be some relationship created either "through court order ... family relationship or ... some other means." (Pet. at 4). She asserts that the 5 to 7 hours per day, 5 days per week, that she worked as Mr. Furry's personal care aide were an insufficient basis for the court to find her a responsible party. Williams raised this issue at trial in her closing arguments (1/8/2008 Tr. 221-223). Williams' argument, however, has no merit.<sup>8</sup>

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<sup>8</sup> Code § 18.2-369, at the time of the offense in 2003, established an offense for the abuse and neglect of incapacitated adults and provides, in pertinent part as follows:

A. It shall be unlawful for any responsible person to abuse or neglect any incapacitated adult as defined in this section. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect does not result in serious bodily injury or disease to the incapacitated adult shall be guilty of a Class 1 misdemeanor. Any responsible person who is convicted of a second or subsequent offense under this subsection shall be guilty of a Class 6 felony.

B. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or

## **Standard of Review**

When addressing a claim that the evidence was insufficient, an appellate court is required to consider the evidence and all inferences fairly deducible there from in the light most favorable to the Commonwealth. See Riner v. Commonwealth, 268 Va. 296, 303, 601 S.E.2d 555, 558 (2004); Commonwealth v. Hudson, 265 Va. 505, 514, 578 S.E.2d 781, 786 (2003).

“The appellate court has the duty to examine the evidence that tends to support the conviction and uphold the conviction unless it is plainly wrong or without evidence to support it.” McCain v. Commonwealth, 261 Va. 483, 492-93, 545 S.E.2d 541, 547 (2001). See also Pease v. Commonwealth, 39 Va. App. 342, 355, 573 S.E.2d 272, 278 (2002) (*en banc*), aff’d, 266 Va. 397, 588 S.E.2d 149 (2003).

Where there is evidence to support a conviction, a reviewing court must not substitute its own judgment, “even if its view of the evidence might differ from the conclusions reached by the finder of fact at the trial.” Commonwealth v. Taylor, 256 Va. 514, 518, 506 S.E.2d 312, 314 (1998).

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neglect results in serious bodily injury or disease to the incapacitated adult shall be guilty of a Class 6 felony.

The statute was amended to increase the punishment for a violation of Code § 18.2-369(B) from a Class 6 to a Class 4 felony in 2004, and in 2007 the General Assembly made it a Class 3 felony if death resulted for the abuse and neglect.

It is “the province of the [fact-finder], rather than an appellate court,” to weigh the facts and judge the credibility of witnesses. Commonwealth v. Presley, 256 Va. 465, 470, 507 S.E.2d 72, 75 (1998).

### **Responsible Person**

In enacting § 18.2-369, the General Assembly specifically defined the phrase “responsible person.” For purposes of Code § 18.2-369, a “responsible person” is “a person who has responsibility for the care, custody or control of an incapacitated person by operation of law or who has assumed such responsibility voluntarily, by contract or in fact.” Va. Code Ann. § 18.2-369(C). When analyzing a statute, this Court “must assume that ‘the legislature chose, with care, the words it used . . . and [is] bound by those words as we interpret the statute.’” Burrell v. Commonwealth, 50 Va. App. 72, 84, 646 S.E.2d 35, 42 (2007). The term “responsible person,” contrary to Williams’ argument on brief, has been given a broad meaning by the General Assembly which is not proscribed to a limited category of individuals. See Wood v. Commonwealth, 214 Va. 97, 99, 197 S.E.2d 200, 202 (1973). Indeed, Williams mistakenly substituted the words “some other means,” instead of using the broad language of the

statue itself that includes relationships established “voluntarily, by contract or in fact.”<sup>9</sup>

In the present case, the evidence established that Williams was Mr. Furry’s home health aide, and that Williams’ duties included light house cleaning, toileting, preparing meals, transferring and bathing patients. (Tr. 76, 78, 243, 246). The evidence further established that Williams was responsible for these duties by virtue of her employment. (Tr. 75-78). The Commonwealth not only established that Sierra hired Williams to care for Mr. Furry, the Commonwealth established that Sierra paid Williams to care for Mr. Furry. (Tr. 78-79, 83). Based on Mr. Furry’s condition on August 21, 2003, that the care provided was grossly deficient.

The trial court found Williams guilty of Abuse and Neglect of an Incapacitated Adult under Virginia Code § 18.2-369 and that finding is supported by the evidence. (Tr. 239-240) The evidence, when viewed in light of the applicable standard of appellate review, was sufficient to establish by contract and in fact that Williams was a responsible party for the care of Mr. Furry, and that Williams’ inaction caused the indisputable neglect Mr. Furry suffered.

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<sup>9</sup> The phrase “in fact” means “[a]ctual or real; resulting from the acts of parties rather than by operation of law.” BLACKS LAW DICTIONARY 792 (8<sup>th</sup> ed. 2004).

**II. THE EVIDENCE AT TRIAL SUPPORTED THE TRIAL COURT'S FINDING THAT WILLIAMS NEGLECTED MR. FURRY IN VIOLATION OF CODE § 18.2-369.**

Williams argues in her petition that the evidence did not establish that she neglected Mr. Furry, and she reiterates her argument that she is not the responsible party. (Pet. at 7, 8). Her arguments are refuted by the simple fact that his condition deteriorated dramatically in a relatively short time span while Mr. Furry was under Williams' care. The trial court found Williams guilty of Abuse and Neglect of an Incapacitated Adult under Virginia Code § 18.2-369 and that finding is supported by the evidence. (Tr. 239-240)

**Standard of Review**

As noted previously, when a defendant challenges the sufficiency of the evidence on appeal, an appellate court is required to consider the evidence and all inferences fairly deducible there from in the light most favorable to the Commonwealth. See supra at 8-9.

**Neglect**

Virginia Code § 18.2-369 defines "Neglect" as "the knowing and willful failure by a responsible person to provide treatment, care, goods or services which results in injury to the health or endangers the safety of an



incapacitated adult.” In Correll v. Commonwealth, 269 Va. 3, 607 S.E.2d 119 (2005), the Supreme Court addressed the meaning of the term “willful” in the context of the abuse and neglect statute.

We hold that in the context of Code § 18.2-369, the word “willful” describes conduct that must be knowing or intentional, rather than accidental, and undertaken without justifiable excuse, without ground for believing the conduct is lawful or with a bad purpose. Thus, “willful,” as used in Code § 18.2-369, contemplates an intentional, purposeful act **or omission** in the care of an incapacitated adult by one responsible for that adult's care.

Correll, 269 Va. at 13, 607 S.E.2d at 124 (emphasis added).

### **Analysis**

Williams contends that “the trial court committed err by finding that there was sufficient evidence that [Williams] neglected Mr. Furry under § 18.2-369, Code of Virginia.” (Pet. at 7). Williams, however, did not make this argument at trial and it is barred from review on appeal by Rule 5A:18. “Under this rule, a specific argument must be made to the trial court at the appropriate time, or the allegation of error will not be considered on appeal.” Edwards v. Commonwealth, 41 Va. App. 752, 760, 589 S.E.2d 444, 448 (2003) (*en banc*). See Thomas v. Commonwealth, 44 Va. App. 741, 750, 607 S.E.2d 738, 742, aff'd en banc, 45 Va. App. 811, 613 S.E.2d

870 (2005). Moreover, even if it had been raised, the evidence at trial establishes the argument has no merit.

Williams began to care for Mr. Furry in May or June of 2003. (Tr. 76) The evidence established that Williams' duties as part of her employment included light house cleaning, toileting, preparing meals, transferring and bathing patients. (Tr. 76, 78, 243, 246) Testimony at trial established that Williams worked for four hours in Mr. Furry's apartment on August 21, 2003. (Tr. 86) However, when paramedic Hinson entered Mr. Furry's apartment later that day, Hinson found Mr. Furry apartment in unimaginable conditions. Mr. Furry's apartment smelled of cat urine. (Tr. 36). The recliner where Mr. Furry sat was soaked with urine. (Tr. 46). There were cat feces on the floor. (Tr. 38). Mr. Furry's kitchen contained trash, dirty dishes, pots and pans. (Tr. 36-38).

In addition, Mr. Furry's physical condition was also beyond belief. Specifically, Mr. Furry's shirt was saturated in drool and his shorts were saturated with urine. (Tr. 39). Because of excess fluid in his legs, Mr. Furry's legs were "weeping" through his pores. (Tr. 39). Mr. Furry's socks contained hundreds of maggots on each foot. (Tr. 40). Mr. Furry's feet and legs were swollen with open sores. (Tr. 40-41, 50-51, 282-287). Mr. Furry's buttocks contained a bed sore. (Tr. 53). No care or treatment had

been provided to Mr. Furry's infected bed sore or Mr. Furry's infected feet. (Tr. 59-60). Expert testimony established that Mr. Furry's bed sore had been developing for one to two months. (Tr. 153, 189). Expert testimony also established that the maggots had been developing on Mr. Furry's feet for 4 to seven days. (Tr. 273-295).

Based on these facts, it was reasonable for the court to conclude that Williams intentionally provided little or no care for the entire period that Sierra employed Williams to care for Mr. Furry. Even when Mr. Furry's feet were "oozing and bleeding," Williams made no effort to call emergency services. (Tr. 85) This paucity of basic care, care Williams was paid to provide, demonstrates Williams' willful indifference to Mr. Furry circumstances. Furthermore, Williams' failure to provide care meets and exceeds the standard necessary for the court to find neglect.

## CONCLUSION

For all the foregoing reasons, the petition should be denied and the judgment appealed from the Circuit Court of Prince William County should be affirmed.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA  
Respondent herein.

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**CERTIFICATE OF TRANSMISSION AND SERVICE**

On October 3, 2008, the required copies of this brief were hand-delivered to the Clerk's Office of this Court for filing and a copy was mailed to John F. Carroll, Esquire, Carroll & Carroll, P.C., 10513 Judicial Drive, Suite 102, Fairfax, VA 22030, counsel for the petitioner.

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Michael T. Judge  
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