

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT RILEY,

Defendant-Appellant.

UNPUBLISHED

July 21, 2000

No. 211368

Recorder's Court

LC No. 97-005401

Before: Cavanagh, P.J., and Holbrook, Jr., and Kelly, JJ.

Holbrook, Jr., J. (*concurring*).

I concur with the result and the analysis set forth in the majority opinion. I write separately, however, to indicate my agreement with the following conclusion reached by the plurality opinion in *Lilly v Virginia*, 527 US 116; 119 S Ct 1887; 144 L Ed 2d 117 (1999): “The decisive fact . . . is that accomplices’ confessions that inculcate a criminal defendant are not within a firmly rooted exception to the hearsay rule as that concept has been defined in our Confrontation Clause jurisprudence.” *Id.* at 134 (footnote omitted).

Although not mandatory authority, *People v Beasley*, 239 Mich App 548, 559; 609 NW2d 581 (2000), I am persuaded by the thorough analysis set forth by the *Lilly* plurality that accomplice testimony such as is present in the case before us falls “outside of the realm of those ‘hearsay exception[s] [that are] so trustworthy that adversarial testing can be expected to add little to [the statements’] reliability.’” *Id.* at 133, quoting *White v Illinois*, 502 US 346, 357; 112 S Ct 736; 116 L Ed 2d 848 (1992). In *Beasley*, this Court noted that because *Lilly* was a plurality opinion, Michigan courts are bound to follow the decision in *People v Poole*, 444 Mich 151; 506 NW2d 505 (1993). *Beasley, supra* at 559. However, the *Poole* Court specifically declined to address whether hearsay statements such as the one at issue here fall within a firmly rooted exception to the hearsay rule. *Id.* at 163. I agree with the *Lilly* plurality that such statements do not fall within a firmly rooted hearsay exception.

Therefore, in order to establish that such hearsay statements possess the required adequate indicia of reliability to allow for their admission into evidence, the statements must “contain[] ‘particularized guarantees of trustworthiness’ such that adversarial testing would be expected to add

little, if anything to the statements' reliability." *Lilly, supra* at 125, quoting *Ohio v Roberts*, 448 US 56, 66; 100 S Ct 2531; 65 L Ed 2d 597 (1980). I agree with the majority that the statement at issue here does not possess the requisite "particularized guarantees of trustworthiness." Accordingly, because the statement was not so inherently reliable that adversarial testing was unnecessary, I conclude that the admission of the statement violated defendant's Confrontation Clause rights.

/s/ Donald E. Holbrook, Jr.