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## Burlile v. Commonwealth 531 S.E.2d 26 (Va. Ct. App. 2000)

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# Burlile v. Commonwealth

## 531 S.E.2d 26 (Va. Ct. App. 2000)

### I. Facts

On the evening of October 14, 1997, Christopher Allen Burlile ("Burlile") shot and killed Richard Harris, Jr. ("Harris"). Later that night, Burlile and an accomplice broke into the home of Chakeisha Carter ("Carter"), who was shot and killed. Shotgun shells found at the scene of Carter's murder matched shells found at the scene of Harris's murder. Harris's girlfriend testified that she saw Burlile shoot Harris with a shotgun. The Commonwealth did not present evidence that anyone saw Burlile shoot Carter.<sup>1</sup>

Burlile was indicted on four capital murder charges. Two indictments charged Burlile with the killing of more than one person as part of the same act or transaction.<sup>2</sup> The two other capital murder indictments alleged the killing of more than one person within a three-year period.<sup>3</sup> All four capital murder indictments were based on the murders of Harris and Carter. The circuit court granted the joint motion of the Commonwealth and the defendant to "combine" the two indictments charging capital murder under Virginia Code section 18.2-31(7) into one capital murder indictment, and to "combine" the indictments charging capital murder under Virginia Code section 18.2-31(8) into a second capital murder indictment.<sup>4</sup> The jury found Burlile guilty on each of the two "combined" indictments and recommended a sentence of life in prison.<sup>5</sup> Burlile appealed his conviction under section 18.2-31(8) for the willful, deliberate, and premeditated killing of two persons within a three-year period. Burlile argued that the trial court erred in refusing to accept his proffered jury instruction requiring proof that he was the triggerman in both murders.<sup>6</sup>

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1. *Burlile v. Commonwealth*, 531 S.E.2d 26, 27 (Va. Ct. App. 2000).

2. *Id.*; see VA. CODE ANN. § 18.2-31(7) (Michie 2000).

3. *Burlile*, 531 S.E.2d at 27; see VA. CODE ANN. § 18.2-31(8) (Michie 2000).

4. *Burlile*, 531 S.E.2d at 27. All four indictments laid venue in the City of Richmond. *Id.* In a prosecution for capital murder under § 18.2-31(8), the killing of more than one person within a three-year period, venue may be laid "in any jurisdiction in the Commonwealth in which any one of the killings may be prosecuted." VA. CODE ANN. § 19.2-247 (Michie 2000).

5. *Burlile*, 531 S.E.2d at 27.

6. *Id.* at 28. Burlile's proffered instruction was, "[t]o find the defendant guilty of capital murder, you must find that he was the triggerman in two murders." *Id.* at 27. The trial court instructed the jury as follows: "[t]o find the defendant guilty of capital murder,

## II. Holding

The Court of Appeals of Virginia held that section 18.2-31(8) of the Virginia Code does not require the Commonwealth to prove that the defendant was the triggerman in both of the two murders alleged.<sup>7</sup> The court held that section 18.2-31(8) requires the Commonwealth to prove that the defendant was the triggerman in one murder and that he was "at least an accomplice" in another murder committed within three years of the murder in which he was the triggerman.<sup>8</sup>

## III. Analysis / Application in Virginia

The issue before the Court of Appeals of Virginia was whether section 18.2-31(8) requires the Commonwealth to prove that a defendant was the triggerman in both of the murders alleged.<sup>9</sup> The court noted that this was the first case in which it had addressed this issue.<sup>10</sup>

The Court of Appeals of Virginia based its decision on the reasoning of the Supreme Court of Virginia's decision in *Graham v. Commonwealth*.<sup>11</sup> In *Graham*, the Supreme Court of Virginia held that section 18.2-31(7) did not require proof that a defendant was the triggerman in more than one of the murders committed as part of the same act or transaction.<sup>12</sup> The court reasoned that

[t]he language of Code [section] 18.2-31(7) evidences a legislative determination that the described offense is qualitatively more egregious than an isolated act of premeditated murder. This result is accomplished by the addition of a gradation crime to the single act of premeditated murder. Under this subsection, the gradation crime is the defendant's killing of more than one person as part of the same act or transaction.<sup>13</sup>

The Supreme Court of Virginia relied on its decisions in *Briley v. Commonwealth*<sup>14</sup> and *Watkins v. Commonwealth*<sup>15</sup> for the conclusion that section 18.2-31(7) "requires proof only that the defendant was the triggerman in the principal murder charged, and that he was at least an accomplice in the murder of an additional person or persons as part of the same act or transaction."<sup>16</sup>

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you must find that he was the triggerman in at least one of the murders. In the second murder, you may find that he was the triggerman or a princip[al] in the second degree." *Id.* at 27.

7. *Id.* at 28.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Graham v. Commonwealth*, 464 S.E.2d 128 (Va. 1995).

12. *Graham*, 464 S.E.2d at 130; see *Burlile*, 531 S.E.2d at 28.

13. *Graham*, 464 S.E.2d at 130; see *Burlile*, 531 S.E.2d at 28.

14. 273 S.E.2d 57 (Va. 1980).

15. 331 S.E.2d 422 (Va. 1985).

16. *Graham*, 464 S.E.2d at 130; see *Briley v. Commonwealth*, 273 S.E.2d 57, 63 (Va.

The Court of Appeals of Virginia reasoned that since section 18.2-31(8) also "requires the addition of a gradation crime to the single act of premeditated murder," (the killing of another person within a period of three years), section 18.2-31(8) requires "proof only that the defendant was the triggerman in the principal murder charged, and that he was at least an accomplice in the murder of an additional person or persons" within a three year period.<sup>17</sup> The court reasoned that the "gradation crime," the murder of a second person within three years, was analogous to section 18.2-31(7)'s "gradation crime," the murder of a second person in the same act or transaction. Thus, the defendant's culpability for the "gradation crime" did not require that he be the triggerman.<sup>18</sup>

The Court of Appeals of Virginia ruled that the trial court did not err in rejecting Burlile's proposed jury instruction because the instruction was an incorrect statement of the law.<sup>19</sup> The court also found that any error in failing to include the exact language from *Graham* requiring proof that the defendant was the triggerman "in the principal murder charged" was harmless.<sup>20</sup> The court found that the evidence "established beyond a reasonable doubt that appellant was the triggerman in the killing of Harris."<sup>21</sup> This case firmly establishes that the "triggerman" requirement only applies to one act of premeditated murder committed by a defendant charged under Virginia Code section 18.2-31(8). Thus, to prove capital murder under section 18.2-31(8), the Commonwealth is required to prove that the defendant was the "triggerman" in one murder, and that he was at least an accomplice to a second premeditated murder within a three year period.<sup>22</sup>

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1980) (holding that § 18.2-31 does not require the Commonwealth to prove that a defendant charged with murder during the commission of a robbery or rape was a principal in the first degree to the crime of robbery or the crime of rape); *Watkins v. Commonwealth*, 331 S.E.2d 422, 434-35 (Va. 1985) (holding that § 18.2-31 requires only that the Commonwealth prove that the defendant committed the murder and was an accomplice in the commission of the robbery); see also *Burlile*, 531 S.E.2d at 28.

17. *Burlile*, 531 S.E.2d at 28.

18. *Id.*

19. *Id.* at 29.

20. *Id.*; see *Graham*, 464 S.E.2d at 130.

21. *Burlile*, 531 S.E.2d at 29.

22. *Id.*; see VA. CODE ANN. § 18.2-31(8) (Michie 2000).

