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Burlile v. Commonwealth

544 S.E.2d 360 (Va. 2001)

I. Facts

On October 14, 1997, Christopher Allen Burlile ("Burlile") fatally shot Richard Harris Jr. ("Harris").¹ Later that night, Burlile broke into a residence where he shot and killed Chakeisha Carter ("Carter").² On December 1, 1997, Burlile was indicted on two capital murder charges for the killing of Harris and Carter under Section 18.2-31(7) of the Virginia Code.³ The Commonwealth subsequently obtained two additional indictments against Burlile under Section 18.2-31(8) of the Virginia Code.⁴ Prior to jury deliberation, Burlile and the Commonwealth moved jointly to "combine[] for one transaction" the two sets of indictments.⁵ A jury found Burlile guilty as charged and recommended a sentence of life imprisonment for each combined capital murder charge.⁶ The trial court sentenced Burlile in accord with the jury's recommendation.⁷

Burlile appealed to the Court of Appeals of Virginia, which affirmed his convictions.⁸ The Supreme Court of Virginia awarded Burlile an appeal limited to the issue of whether a jury must find that the defendant was a principal in the

1. *Burlile v. Commonwealth*, 544 S.E.2d 360, 361 (Va. 2001).

2. *Id.* On both occasions, another man accompanied Burlile. *Id.*

3. *Id.*; see VA. CODE ANN. § 18.2-31(7) (Michie Supp. 2001) (providing that "[t]he willful, deliberate, and premeditated killing of more than one person as a part of the same act or transaction" constitutes capital murder).

4. *Burlile*, 544 S.E.2d at 361; see VA. CODE ANN. § 18.2-31(8) (Michie Supp. 2001) (providing that "[t]he willful, deliberate, and premeditated killing of more than one person within a three-year period" constitutes capital murder). The indictments are mirror images of one another, except that the victims' names appear in a different order in each. Each reads, in part: "On or about October 15, 1997, in the City of Richmond, CHRISTOPHER ALLEN BURLILE did feloniously, unlawfully, willfully, deliberately, and with premeditation kill and murder one [victim 1] and within a three (3) year period, did kill and murder another, namely: [victim 2]." *Burlile*, 544 S.E.2d at 361.

5. *Id.* at 362. The first combined indictment charged Burlile with "the capital murder of [Carter] and [Harris]" in violation of Section 18.2-31(7) of the Virginia Code. *Id.* The second combined indictment charged Burlile with "the capital murder of [Carter] and [Harris]" in violation of Section 18.2-31(8) of the Virginia Code. *Id.*

6. *Id.*

7. *Id.*

8. *Id.* at 362-63. Burlile's petition for appeal presented three questions for review. *Id.* at 362. The first two regarded admission of evidence during the trial. *Id.* The third addressed the circuit court's failure to give Burlile's requested jury instruction, which directed the jury that "[t]o find the defendant guilty of capital murder, you must find that he was the triggerman in at least one of the murders." *Id.*

first degree, or "triggerman," in each killing at issue in order to convict him of capital murder under Section 18.2-31(8) of the Virginia Code.⁹

II. Holding

The Supreme Court of Virginia held that "[Section] 18.2-31(8) [of the Virginia Code] does not require proof that a defendant charged with capital murder, in the premeditated killing of more than one person within a three-year period, was a principal in the first degree in each murder referenced in the indictment."¹⁰ The court further held that the jury need be instructed only that it must find that the defendant was a principal in the first degree in the principal murder charged and that he was at least an accomplice in the murder of one or more persons other than the principal murder victim within a three year period.¹¹

III. Analysis / Application in Virginia

Burlile contended "that the language of 18.2-31(8) of the Virginia Code is ambiguous because the phrase 'willful, deliberate, and premeditated' appears to relate to both the principal murder charged and the gradation crime on which the elevation to capital murder is based."¹² Burlile therefore argued that, in order to find the defendant guilty of the offense, the court must construe the statute as requiring the defendant to be a principal in the first degree in both the principal murder charged and the killing that constitutes the gradation crime.¹³ Burlile supported this construction by drawing a distinction between Section 18.2-31(8) and other capital murder offenses defined by gradation crimes.¹⁴ Section 18.2-31(8), Burlile argued, differs from other capital murder offenses defined by gradation crimes in that it does not require that there be a transactional nexus between the principal murder charged and the gradation crime.¹⁵ Burlile urged that Section 18.2-31(8) be viewed as a "status" offense, meaning that the defendant's status is that of being the principal in the first degree in more than one murder within a three-year period.¹⁶

9. *Id.* at 361; see § 18.2-31(8).

10. *Burlile*, 544 S.E.2d at 365.

11. *Id.* at 365-66.

12. *Id.* at 365; see § 18.2-31(8).

13. *Burlile*, 544 S.E.2d at 365.

14. *Id.*

15. *Id.*; see § 18.2-31(8). Burlile conceded that when a transactional nexus exists between the murder charged and the gradation crime, as with multiple murders as part of the same act or transaction or where the gradation crime is robbery, rape, or abduction, the defendant need only be a principal in the first degree with respect to the principal offense. *Burlile*, 544 S.E.2d at 365.

16. *Id.*

The court, however, did not agree with Burlile's reading of the statute.¹⁷ Citing *Briley v Commonwealth*,¹⁸ the court stated that with respect to capital murder offenses that included a gradation crime, Section 18.2-31 does not require proof that a defendant charged with the capital murder was also a principal in the first degree to the gradation crime.¹⁹ The court further noted that in applying the rationale of *Briley* to Section 18.2-31(7) it had specifically held that a defendant's culpability for the gradation crime of that subsection need only be that of "an accomplice in the murder of an additional person or persons as part of the same act or transaction."²⁰ In the court's view, the gradation crime in Section 18.2-31(7) is the defendant's killing more than one person as part of the same act or transaction, while the gradation crime in Section 18.2-31(8) is the defendant's killing more than one person within a three-year period.²¹ *Burlile* has the effect of expanding the Supreme Court of Virginia's ruling in *Graham v Commonwealth* to include capital murder charged under Section 18.2-31(8) of the Virginia Code.²²

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17. *Id.*

18. 273 S.E.2d 57 (Va. 1980).

19. *Burlile*, 544 S.E.2d at 365; see *Briley v. Commonwealth*, 273 S.E.2d 57, 63 (Va. 1980) (holding that Section 18.2-31 of the Virginia Code does not require proof that defendant charged with murder during commission of robbery or rape was principal in the first degree to crimes of robbery or rape, but only that defendant was triggerman in the murder and an accomplice in the robbery or rape in order to convict him of capital murder).

20. *Burlile*, 544 S.E.2d at 365; see *Graham v. Commonwealth*, 464 S.E.2d 128, 130 (Va. 1995) (holding that defendant could be found guilty of capital murder under statute governing multiple murders as part of same act or transaction when he was triggerman in premeditated killing of one person, but was only an accomplice in killing of other person).

21. *Burlile*, 544 S.E.2d at 365.

22. *Graham*, 464 S.E.2d 128.

