

COURT OF APPEALS OF VIRGINIA

Present: Judges Benton, Willis and Annunziata
Argued at Richmond, Virginia

CHARLES NATHANIEL ROSS

v. Record No. 0068-97-2

MEMORANDUM OPINION* BY
JUDGE JERE M. H. WILLIS, JR.
DECEMBER 23, 1997

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF BUCKINGHAM COUNTY
Timothy J. Hauler, Judge

Robert H. Gray, Jr., for appellant.

Marla Graff Decker, Assistant Attorney
General (Richard Cullen, Attorney General;
John K. Byrum, Jr., Assistant Attorney
General, on brief), for appellee.

1. Ross invokes proof that he knew the vehicle was occupied only as an element of malice for purposes of the instruction on murder. He acknowledges that such proof was not required to prove manslaughter. Because Ross was not convicted of murder, but was convicted of manslaughter, his contention that the murder instruction was deficient is moot.

2. Because Ross did not present his double-jeopardy contention to the trial court and did not preserve that contention properly for appeal, we will not consider it. Rule 5A:18. The record in this case presents no reason for us to invoke the ends of justice exception to the application of that rule.

*Pursuant to Code § 17-116.010 this opinion is not designated for publication.

The judgment of the trial court is affirmed.

Affirmed.