

SUPREME COURT OF VIRGINIA



SUPREME COURT BUILDING
100 NORTH NINTH STREET
RICHMOND, VIRGINIA 23219
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Granted Appeal Summary

Case

COMMONWEALTH OF VIRGINIA v. KIMBERLY PAUL BARNEY
(Record Number 211126)

From

The Court of Appeals of Virginia.

Counsel

Virginia B. Theisen (Office of the Attorney General) for appellant.

Anthony Balady (Office of the Public Defender) for appellee.

Assignments of Error

1. The Court of Appeals erred in ruling that the Virginia Model Jury Instructions reciting the elements of use of a firearm in the commission of a felony and defining the term “firearm” for that offense failed to properly and fully instruct the jury in this case.
2. The Court of Appeals erred in ruling that the Virginia Model Jury Instruction defining “firearm” for the crime of use of a firearm was ambiguous, was potentially misleading to the jury, and required clarification.
3. The Court of Appeals erred in ruling that “no rational, properly instructed jury could conclude beyond a reasonable doubt” that Barney used a firearm in the commission of the robbery. The proper question is whether the evidence was sufficient; the issue of the adequacy of a jury instruction was separate from the sufficiency inquiry.
4. The Court of Appeals erred in finding that the direct and circumstantial evidence was insufficient to support a conviction for use of a firearm in the commission of robbery.