

Tuesday 14th

January, 1997.

Thomas Payne Brown, Jr., Appellant,

against Record No. 0926-94-2
Circuit Court No. 91-654-F

Commonwealth of Virginia, Appellee.

Upon a Rehearing En Banc

Before Chief Judge Moon, Judges Baker, Benton, Coleman,
Willis, Elder, Bray, Fitzpatrick, Annunziata and Overton

Steven D. Benjamin (Betty Layne DesPortes;
Steven D. Benjamin and Associates, on
brief), for appellant.

Eugene Murphy, Assistant Attorney General
(James S. Gilmore, III, Attorney General, on
brief), for appellee.

This cause was reviewed on rehearing en banc, and upon consideration of the arguments of counsel and the entire record in this case, the judgment of the trial court rendered on April 26, 1994 is affirmed without opinion by an equally divided court. Accordingly, the opinion previously rendered by a panel of this Court on April 23, 1996 is withdrawn, and the mandate entered that date is vacated. The appellant shall pay to the Commonwealth of Virginia thirty dollars damages.

This order shall be published and certified to the trial court.

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By:

Deputy Clerk