

Tuesday

24th

February, 2004.

Marcus Anthony Hunt,

Appellant,

against

Record No. 1575-02-2

Circuit Court Nos. 02-559-F and 02-560-F

Commonwealth of Virginia,

Appellee.

Upon a Rehearing En Banc

Before Chief Judge Fitzpatrick, Judges Benton, Elder, Annunziata, Bumgardner, Frank,  
Humphreys, Clements, Felton and Kelsey

Craig W. Stallard, Assistant Public Defender (Office of the  
Public Defender, on brief), for appellant.

Stephen R. McCullough, Assistant Attorney General (Jerry W.  
Kilgore, Attorney General, on brief), for appellee.

By opinion dated September 2, 2003, a panel of this Court, with one judge dissenting, reversed and dismissed the convictions of Marcus Anthony Hunt for possession of a firearm while in possession of cocaine and possession of cocaine with the intent to distribute, holding the search was unreasonable. See Hunt v. Commonwealth, 41 Va. App. 404, 585 S.E.2d 827 (2003). We granted the Commonwealth's petition for rehearing *en banc* and stayed the mandate of that decision.

Upon rehearing *en banc*, the judgment of the trial court is affirmed without opinion by an evenly divided Court. Accordingly, the opinion previously rendered by a panel of this Court on September 2, 2003 is withdrawn and the mandate entered on that date is vacated. The appellant shall pay to the Commonwealth of Virginia thirty dollars damages.

Chief Judge Fitzpatrick, Judges Bumgardner, Humphreys, Felton and Kelsey voted to affirm the judgment of the trial court.

Judges Benton, Elder, Annunziata, Frank and Clements voted to reverse the judgment of the trial court.

The Commonwealth shall recover of the appellant the costs in this Court, which costs shall include a total fee of \$925 for services rendered by the Public Defender on this appeal, in addition to counsel's necessary direct out-of-pocket expenses, and the costs in the trial court.

This order shall be certified to the trial court.

Costs due the Commonwealth by  
appellant in Court of Appeals of Virginia:

Public Defender      \$925.00   plus costs and expenses

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By:

Deputy Clerk