

Tuesday 1st

May, 2001.

Mykal Rashad, Appellant,

against Record No. 1697-99-2
Circuit Court Nos. CR98F01091-01,
CR98F01577-01 and CR98F01577-02

Commonwealth of Virginia, Appellee.

Upon a Rehearing En Banc

Before Chief Judge Fitzpatrick, Judges Benton, Willis,
Elder, Bray, Annunziata, Bumgardner, Humphreys, Clements and Agee*

Robert J. Wagner (Wagner & Wagner, on briefs),
for appellant.

Shelly R. James, Assistant Attorney General
(Mark L. Earley, Attorney General, on brief), for
appellee.

By unpublished opinion, a divided panel of this Court
affirmed the appellant's convictions. Rashad v. Commonwealth, Record
No. 1697-99-2 (Va. Ct. App. September 26, 2000). We stayed the
mandate of that decision and granted a rehearing en banc.

Upon a rehearing en banc, the stay of the mandate is
lifted, and the judgment of the trial court is affirmed in accordance
with the majority panel opinion.

Judges Benton and Elder dissent for the reasons set forth
in the panel dissent.

* Judge Frank recused himself from this case.

Chief Judge Fitzpatrick would reverse on the ground that the Commonwealth failed to disclose exculpatory evidence.

It is ordered that the trial court allow counsel for the appellant an additional fee of \$200 for services rendered the appellant on the rehearing portion of this appeal, in addition to counsel's costs and necessary direct out-of-pocket expenses. This amount shall be added to the costs due the Commonwealth in the September 26, 2000 mandate.

This order shall be certified to the trial court.

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By:

Deputy Clerk