

Tuesday 24th

October, 2000.

David Darnell Lowery, Appellant,
against Record No. 1451-98-4
Circuit Court No. CF980040
Commonwealth of Virginia, Appellee.

Upon a Rehearing En Banc

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

Thomas W. Farrington (Hendershot &
Farrington, on brief), for appellant.

John H. McLees, Jr., Senior Assistant
Attorney General (Mark L. Earley, Attorney
General, on brief), for appellee.

On December 7, 1999, a panel of this Court reversed and
dismissed the conviction of David Darnell Lowery for robbery. See
Lowery v. Commonwealth, 31 Va. App. 131, 521 S.E.2d 770 (1999). 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 December
7, 1999 is withdrawn, and the mandate entered on that date is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, Frank, Humphreys and Clements voted to affirm said judgment.

Judges Benton, Willis, Elder, Bray and Annunziata voted to reverse the judgment of the trial court.

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

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By:

Deputy Clerk