

COURT OF APPEALS OF VIRGINIA

Present: Chief Judge Moon, Judges Baker, Benton, Coleman,  
Willis, Elder, Bray, Fitzpatrick, Annunziata and Overton  
Argued at Richmond, Virginia

AARON AUGUSTIS WITTS

v. Record No. 0078-94-1

ORDER

COMMONWEALTH OF VIRGINIA

UPON A REHEARING EN BANC

Thomas W. Carpenter (Overman, Cowardin & Martin,  
P.L.C., on brief), for appellant.

Steven A. Witmer, Assistant Attorney General  
(James S. Gilmore, III, Attorney General, on brief),  
for appellee.

By memorandum opinion issued April 4, 1995, a panel of this Court affirmed the conviction of Aaron Augustis Witts (appellant) for use of profane, threatening, or indecent language over public airways, in violation of Code § 18.2-427. Witts v. Commonwealth, No. 0078-94-1, 1995 WL 143096 (Va. Ct. App. April 4, 1995) (Benton, J., dissenting). On appellant's motion, we stayed the mandate of that decision and granted rehearing en banc which was heard on October 5, 1995.

For the reasons stated in the panel majority opinion, the stay of the mandate of the April 4, 1995 opinion is vacated, and we affirm the judgment of the trial court.

Judges Benton, Coleman, Elder, and Fitzpatrick, for the reasons stated in Judge Benton's panel dissent, would reverse the conviction.

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

Affirmed.