

**VIRGINIA:**

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday, the 14th day of November, 1997.

Edwin Cecil Turner, Jr., Appellant,

against Record No. 962555  
Court of Appeals No. 0986-94-3

Commonwealth of Virginia, Appellee.

Upon an appeal from a judgment rendered by the Court of Appeals of Virginia on the 1st day of October, 1996.

Upon consideration of the record, the briefs, and argument of counsel, the Court is of opinion that no error exists in the judgment of the Court of Appeals of Virginia upholding a trial court's judgment confirming the verdict of a jury that found Edwin Cecil Turner, Jr., "guilty of first degree murder and fix[ed] his punishment at: imprisonment for life."

At trial, the Circuit Court of the City of Roanoke instructed the jury on the definitions of first degree murder, second degree murder, self defense, and irresistible impulse, but ruled that the evidence was insufficient to support an instruction defining voluntary manslaughter. The Court of Appeals reversed that ruling, but held that the trial court's error was harmless and affirmed the conviction and the penalty imposed. Turner v. Commonwealth, 23 Va. App. 270, 476 S.E.2d 504 (1996). For the reasons stated by the Court of Appeals, its judgment is affirmed.

Justice Koontz took no part in the consideration or disposition of this appeal.

The defendant will pay to the Commonwealth thirty dollars in

damages.

It is ordered that the said circuit court allow counsel for the appellant a fee of \$725 for services rendered the appellant on this appeal, in addition to counsel's costs and necessary direct out-of-pocket expenses.

The Commonwealth shall recover of the appellant the amount paid court-appointed counsel to represent him in this proceeding, counsel's costs and necessary direct out-of-pocket expenses, and the fees and costs to be assessed by the clerk of this Court and the clerks of the courts below.

JUSTICE LACY and JUSTICE HASSELL, dissent.

This order shall be certified to the Court of Appeals of Virginia and the Circuit Court of the City of Roanoke and shall be published in the Virginia Reports.

A Copy,

Teste:

David B. Beach, Clerk

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

Attorney's fee: \$725.00 plus costs and expenses

Teste:

Clerk