

SUPREME COURT OF VIRGINIA

Startin v. Commonwealth

706 S.E.2d 873 (Va. 2011) · No. Record No. 100778 · Decided March 4, 2011

SUMMARY

The Supreme Court of Virginia held that a nonfunctional commemorative replica handgun may qualify as a “firearm” under Virginia Code § 18.2-53.1 when it gives the appearance of having the capability to fire a projectile. The court affirmed Duane Elmer Startin, Jr.’s convictions for using or displaying a firearm during the commission of a felony, relying on the statute’s purpose of preventing fear of physical harm. The court distinguished the broader definition applicable under § 18.2-53.1 from the narrower definition used in the firearm-possession statute.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                            |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Virginia                                                                                                                                                                                                                                                  |
| WRITING FOR THE COURT | Donald W. Lemons; Chief Justice Kinser; Justice Lemons; Justice Goodwyn; Justice Millette; Senior Justice Russell; Senior Justice Lacy; Senior Justice Koontz                                                                                                              |
| JURISDICTION          | Virginia                                                                                                                                                                                                                                                                   |
| DECIDED               | March 4, 2011                                                                                                                                                                                                                                                              |
| DOCKET                | Record No. 100778                                                                                                                                                                                                                                                          |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Startin appealed convictions for two counts of using or displaying a firearm during the commission of a felony under Code § 18.2-53.1. The Court of Appeals of Virginia affirmed, including on rehearing en banc, and the Supreme Court of Virginia reviewed the judgment. |
| STANDARD OF REVIEW    | Statutory construction is reviewed de novo. The sufficiency of the evidence is reviewed in the light most favorable to the prevailing party, and the judgment will be reversed only if plainly wrong or without evidence to support it.                                    |
| PRECEDENTIAL VALUE    | Published, precedential opinion of the Supreme Court of Virginia                                                                                                                                                                                                           |
| PARTIES               | Duane Elmer Startin, Jr. v. Commonwealth of Virginia                                                                                                                                                                                                                       |

TOPICS

statutory interpretation

criminal procedure

appellate procedure

standard of review

## PRACTICE AREAS

criminal law

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## QUESTIONS PRESENTED

1. Whether a nonoperational commemorative replica handgun that has the appearance of an actual firearm qualifies as a firearm under Code § 18.2-53.1.
2. Whether the evidence was sufficient to support Startin's convictions for using or displaying a firearm during the commission of a felony.

## HOLDINGS

1. For purposes of Code § 18.2-53.1, the term firearm includes an instrument that is not capable of firing a projectile but gives the appearance of having the capability to fire a projectile.
2. The evidence was sufficient to prove that Startin used or displayed a firearm within the meaning of Code § 18.2-53.1 because the replica had the appearance of an actual firearm and was used in a threatening manner during the robberies.

## KEY QUOTATIONS

*"Consequently, we hold that the Commonwealth's evidence was sufficient to convict Startin of using a firearm in violation of Code § 18.2-53.1 upon proof that he "employed an instrument which gave the appearance of having a firing capability, whether or not the object actually had the capacity to propel a bullet by the force of gunpowder."" (879)*

*"Accordingly, the definition under Code § 18.2-53.1 for use or display of a firearm during the commission of a felony warrants a "broad construction" and includes any instrument that "gives the appearance of being a firearm."" (878)*

## FACTUAL BACKGROUND

Startin used a commemorative John Wayne replica .45 caliber handgun during two pharmacy robberies. The replica had the same outward size, weight, and shape as an operational firearm designed to expel .45 caliber ammunition, but it lacked a firing pin or other mechanism necessary to fire a projectile by explosion. The Commonwealth conceded that the replica was the object Startin used or displayed, and the trial court convicted him under Code § 18.2-53.1.

## PROCEDURAL HISTORY

Startin pleaded guilty to three robbery counts but pleaded not guilty to two firearm-use counts, arguing that the commemorative replica handgun was not a firearm under Code § 18.2-53.1. The trial court convicted him, and the Court of Appeals affirmed both initially and on rehearing en banc. The Supreme Court of Virginia affirmed the Court of Appeals.

## DISPOSITION

affirmed

## CASES CITED

- Holloman v. Commonwealth, 221 Va. 196, 269 S.E.2d 356 (1980)
- Yarborough v. Commonwealth, 247 Va. 215, 441 S.E.2d 342 (1994)
- Armstrong v. Commonwealth, 263 Va. 573, 562 S.E.2d 139 (2002)
- Department of Motor Vehicles v. Athey, 261 Va. 385, 542 S.E.2d 764 (2001)
- Ansell v. Commonwealth, 219 Va. 759, 250 S.E.2d 760 (1978)
- Johnson v. Commonwealth, 209 Va. 291, 163 S.E.2d 570 (1968)
- Harris v. Commonwealth, 274 Va. 409, 650 S.E.2d 89 (2007)
- Conyers v. Martial Arts World of Richmond, Inc., 273 Va. 96, 639 S.E.2d 174 (2006)
- Clark v. Commonwealth, 279 Va. 636, 691 S.E.2d 786 (2010)
- Thomas v. Commonwealth, 25 Va. App. 681, 492 S.E.2d 460 (1997)