

SUPREME COURT OF VIRGINIA



SUPREME COURT BUILDING
100 NORTH NINTH STREET
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Granted Appeal Summary

Case

COMMONWEALTH OF VIRGINIA v. BRIAN FAYNE
(Record Number 250359)

From

The Court of Appeals of Virginia.

Counsel

Jason S. Miyares, Tanner M. Russo (Office of the Attorney General) for appellant.

James O. Broccoletti (Zoby & Broccoletti, P.C.) for appellee.

Assignments of Error

1. The Court of Appeals erred in reversing the trial court's denial of Fayne's motion to suppress his incriminating statements, erroneously holding that Fayne did not voluntarily reinitiate discussion of the investigation and did not voluntarily, knowingly, and intelligently waive his right to counsel when he reinitiated.
2. The Court of Appeals erred in relying on *Ferguson v. Commonwealth*, 52 Va. App. 324 (2008) (en banc), aff'd, 278 Va. 118 (2009), to hold that continued interrogation after a suspect requests counsel necessarily forecloses any finding of subsequent voluntary reinitiation by a suspect. To the extent that either *Ferguson v. Commonwealth*, 52 Va. App. 324 (2008) (en banc), or *Commonwealth v. Ferguson*, 278 Va. 118 (2009), compels this conclusion, this Court should overrule those decisions.
3. The Court of Appeals erred by holding that the prosecution must demonstrate a voluntary waiver of the right to counsel, as opposed to merely a knowing and intelligent waiver, following a suspect's voluntary post-invocation reinitiation of a police interview. To the extent that *Overbey v. Commonwealth*, 65 Va. App. 636 (2015), *Giles v. Commonwealth*, 28 Va. App. 527 (1998), and *Quinn v. Commonwealth*, 25 Va. App. 702 (1997), require a showing of a voluntary waiver after a suspect's voluntary reinitiation, this Court should overrule those decisions.