

SUPREME COURT OF VIRGINIA



SUPREME COURT BUILDING
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Granted Appeal Summary

Case

THOMAS AGEE FITZGERALD v. COMMONWEALTH OF VIRGINIA
(Record Number 250588)

From

The Court of Appeals of Virginia.

Counsel

Elena Kagan (Virginia Indigent Defense Commission) for appellant.

Jason Douglas Reed (Office of the Attorney General) for appellee.

Assignment of Error

1. The Court of Appeals erred in finding Virginia Code § 18.2- 308.4 constitutional as applied to Mr. Fitzgerald.
 - a. *Watkins v. Commonwealth*, 83 Va. App. 456 (2025) was wrongly decided and should be overturned, reversed, or modified.
 - b. The Court of Appeals erred in finding that Mr. Fitzgerald, by his use of drugs and conduct, fell under the ratio decidendi of *Watkins v. Commonwealth*.
 - c. The Court erred in finding § 18.2-308.4 as applied to Mr. Fitzgerald analogous to the English felony of smuggling contraband.
 - d. The Court of Appeals erred in failing to find that Mr. Fitzgerald is among “the people” protected by the Second Amendment and that the Second Amendment’s plain text covered Mr. Fitzgerald’s conduct.