



Supreme Court Decides Incident to Arrest – Vehicle Case



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The Fourth Amendment does not require the suppression of evidence obtained incident to an arrest that is based upon probable cause, where the arrest violates a provision of state law.

On April 23rd the United States Supreme Court decided a case in which a person and a vehicle were searched incident to an arrest. The arrest was for operating on a suspended license. The case, *Commonwealth of Virginia v. Moore*,ⁱ involved an arrest for a suspended license followed by searches incident to that arrest.

On February 20th, 2003, two detectives in Portsmouth, Virginia heard a radio dispatch concerning a subject, "Chubs" who was driving with a suspended license. The two officers responded to the area. One of the officers knew that Chubs was actually David Moore. The detectives spotted Moore and pulled him over. The detectives handcuffed Moore and put him in their police car. They *Mirandized* Moore and secured a consent to search his hotel room. Due to a miscommunication, no one searched Moore at the scene of his arrest; rather Moore was searched after being driven to his hotel room. Upon searching Moore he was found to be in possession of 16 grams of crack cocaine and \$516 in cash. Moore challenged the seizure of the evidence arguing that he should not have been searched incident to his arrest. His argument was based on the fact that under Virginia law a person driving on a suspended license is supposed to be cited and released at the scene unless they meet one of the specified exceptions which allow a custodial arrest by the statute.ⁱⁱ The exceptions were not raised by the prosecutor in the lower court. Essentially Moore argues that even though the officers had probable cause to arrest him; they should have issued him a citation instead of making a custodial arrest. He further argued that if the officers could not make a custodial arrest then they would not be allowed to search him incident to arrest.

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Essentially, his argument is that the search incident to arrest was the fruit of an unlawful arrest due to the state statute on arrest.

One of Moore's arguments for suppression had its foundation in a prior United States Supreme Court case, *Knowles v. Iowa*.ⁱⁱⁱ In *Knowles*, the United States Supreme Court rejected a search incident to citation which was allowed under state statute if the offense for which the citation was being issued allowed an officer to make an arrest if they so chose.^{iv} In *Knowles* the Court re-iterated that a significant purpose and justification for search incident to arrest is the officer's lengthy exposure to the arrestee which may allow the arrestee to reach for a weapon or destroy evidence. The Court recognized that this danger did not exist if officer were not going to be exposed to the subject since they were issuing a citation and releasing him. Moore prevailed in the Virginia Supreme Court on Fourth Amendment grounds setting off an appeal to the United States Supreme Court by the Commonwealth of Virginia.

The United States Supreme Court rejected Moore's arguments on a number of grounds. The Court began with a historical analysis of the common law which had never based Fourth Amendment analysis on a state's particular laws. It concluded that there was no foundation for these arguments in the history of the Fourth Amendment.

The Court then turned to its prior cases where it has always held that an arrest under the Fourth Amendment is reasonable where supported by probable cause. The Court noted that where a crime, even a minor crime, is committed in the officer's presence, there is probable cause to arrest and such an arrest is constitutionally reasonable.

Throughout the opinion, the Court noted that a state is free to place greater restrictions on officers and provide enhanced privacy protections for persons in their state. When doing so, the state must do so under state law and provide the remedy for a violation of the rule under state law. Where a state provides greater protection however, the Fourth Amendment reasonableness analysis does not change as a result of that protection. If the state chooses to restrict law enforcement actions beyond that mandated by the United States Constitution, the state must create its own remedy for a violation of that state restriction, it cannot rely on the Fourth Amendment and the Fourth Amendment's exclusionary rule. The Court noted that Virginia had not created a state exclusionary provision and instead was trying to apply the Fourth Amendment's exclusionary provision.

The Court concluded: "While individual States may surely construe their own constitutions as imposing more stringent constraints on police conduct than does the Federal Constitution, state law [does] not alter the content of the Fourth Amendment."

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The Court also noted that prior decisions made clear that “the Fourth Amendment’s meaning did not change with local law enforcement practices—even practices set by rule. While these practices ‘vary from place to place and from time to time,’ Fourth Amendment protections are not ‘so variable’ and cannot ‘be made to turn upon such trivialities.’” The Court held that “when states go above the Fourth Amendment minimum, the [United States] Constitution’s protections concerning search and seizure remain the same.”

In the decision the Court noted the important interests protected by custodial arrests: “Arrest ensures that a suspect appears to answer charges and does not continue a crime, and it safeguards evidence and enables officers to conduct an in-custody investigation.” The Court went on to reiterate that its prior decisions did not distinguish minor crimes from more serious offenses when determining the reasonableness of the arrest on Fourth Amendment grounds. “In *Atwater*^v we acknowledged that nuanced judgments about the need for warrantless arrest were desirable, but we nonetheless declined to limit to felonies and disturbances of the peace the Fourth Amendment rule allowing arrest based upon probable cause to believe a law had been broken in the presence of the arresting officer. The rule extends even to minor misdemeanors, we concluded, because of the need for a bright-line constitutional standard. If the constitutionality of arrest for minor offenses turned in part on inquiries as to risk of flight and danger of repetition, officers might be deterred from making legitimate arrests.”

Finally, the Court noted that if the Fourth Amendment reasonableness of an arrest were to incorporate the rules of state law, the validity of an arrest under the United States Constitution would vary from state to state depending upon the arrest law of that state. This would lead to a vague and confusing result.

As a result of the Court’s holding, the evidence against Mr. Moore was allowed.

Key Points:

- **A state may further restrict the power of law enforcement officers beyond the United States Constitution thus, providing greater protection to individual rights in that state.**

- **If a state provides these enhanced protections based upon state constitutional grounds or state law and provides a remedy, law enforcement will be subject to that remedy when they violate state law.**
- **If your state has a more restrictive standard and an exclusionary rule for violation of that standard, the rulings in this case will not help you in the prosecution of future cases.**
- **State arrest laws do not impact the actions of law enforcement with respect to search and seizure when the officer's actions are challenged on Fourth Amendment [of the United States Constitution] grounds.**
- **Under the United States Constitution an officer may make a warrantless arrest based upon probable cause even for minor offenses.**
- **Where an officer makes a warrantless custodial arrest based upon probable cause, the Fourth Amendment allows the officer to conduct a search incident to arrest of the subject arrested in order to protect the officer as well as to prevent the destruction of evidence during the lengthy exposure of the officer to the suspect necessitated by a custodial arrest.**

ⁱ *Moore v. Commonwealth of Virginia*, 272 Va. 717 (Va. Supreme Ct. 2006) cert. granted *Virginia v. Moore*, 2007 U.S. LEXIS 9069 (September 25, 2007).

ⁱⁱ § 19.2-74. Issuance and service of summons in place of warrant in misdemeanor case; issuance of summons by special policemen and conservators of the peace

A. 1. Whenever any person is detained by or is in the custody of an arresting officer for any violation committed in such officer's presence which offense is a violation of any county, city or town ordinance or of any provision of this Code punishable as a Class 1 or Class 2 misdemeanor or any other misdemeanor for which he may receive a jail sentence, except as otherwise provided in Title 46.2, or § 18.2-266, or an arrest on a warrant charging an offense for which a summons may be issued, and when specifically authorized by the judicial officer issuing the warrant, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving by such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of § 19.2-82. Anything in this section to the contrary notwithstanding, if any person is believed by the arresting officer to be likely to disregard a summons issued under the provisions of this subsection, or if any person is reasonably believed by the arresting officer to be likely to cause harm to himself or to any other person, a magistrate or other issuing authority having jurisdiction shall proceed according to the provisions of § 19.2-82.

2. Whenever any person is detained by or is in the custody of an arresting officer for a violation of any county, city, or town ordinance or of any provision of this Code, punishable as a Class 3 or Class 4 misdemeanor or any other misdemeanor for which he cannot receive a jail sentence, except as otherwise provided in Title 46.2, or to the offense of public drunkenness as defined in § 18.2-388, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such

summons or notice. Upon the giving of such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of § 19.2-82.

ⁱⁱⁱ *Knowles v. Iowa*, 525 U.S. 113 (1998).

^{iv} Iowa Code 805.1 (The issuance of a citation in lieu of arrest or in lieu of continued custody does not affect the officer's authority to conduct an otherwise lawful search. The issuance of a citation in lieu of arrest shall be deemed an arrest for the purpose of the speedy indictment requirements of rule of criminal procedure 2.33(2)(a), Iowa court rules.)

^v *Atwater v. Lago Vista*, 532 U.S. 318 (2001).