
	<p style="text-align: center;"><b>Supreme Court to Hear Incident to Arrest – Vehicle Case</b></p> <p style="text-align: center;">By Jack Ryan</p> <p style="text-align: center;">Legal &amp; Liability Risk Management Institute</p>	
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## Supreme Court to Hear Incident to Arrest –Vehicle Case

### Question Presented

**Does the Fourth Amendment 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 September 25<sup>th</sup> (2007) the United States Supreme Court agreed to hear 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, which will be heard in the Supreme Court as *Commonwealth of Virginia v. Moore*,<sup>i</sup> involved an arrest for a suspended license followed by searches incident to that arrest.

Two detectives in Portsmouth, Virginia heard a radio dispatch concerning a subject driving with a suspended license and responded to the area. The detectives spotted the person in question, 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. 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.<sup>ii</sup> 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.

Moore's arguments for suppression have their foundation in a prior United States Supreme Court case, *Knowles v. Iowa*.<sup>iii</sup> 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.<sup>iv</sup> 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 4<sup>th</sup> Amendment grounds setting off an appeal to the United States Supreme Court by the Commonwealth of Virginia.

In the Supreme Court, the state will argue that this case is different from *Knowles* since in *Knowles*, the officers were releasing Knowles whereas in this case Moore was arrested based upon probable cause to believe that he was committing a misdemeanor. The real question is whether the Virginia statute which required issuance of a citation rather than a custodial arrest, impacts the 4<sup>th</sup> Amendment analysis of an arrest based upon probable cause. If the state statute makes the arrest, which was supported by probable cause, illegal under the 4<sup>th</sup> Amendment, the evidence gets suppressed. If instead the Court finds that an arrest is constitutionally justified whenever the officer has probable cause to believe a crime has been committed irrespective of the nuances of state law, then the evidence should be allowed.

The case may also provide another opportunity for the Court to further examine the reach of the exclusionary rule.

**Stay tuned to the PATC E-Newsletter and watch for the U.S. Supreme Court's decision in *Virginia v. Moore* which will be decided between now and June.**

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<sup>i</sup>. *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).

<sup>ii</sup> § 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

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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.

<sup>iii</sup> *Knowles v. Iowa*, 525 U.S. 113 (1998).

<sup>iv</sup> 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.)