



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 329
May 4, 2008

POLICE DO NOT VIOLATE THE FOURTH AMENDMENT WHEN THEY MAKE ARREST BASED ON PROBABLE CAUSE BUT PROHIBITED BY STATE LAW

Reference: Virginia U.S. Supreme Court
v. No. 06-1082
David Lee Moore _____ U.S. _____
April 23, 2008

FACTS:

Police heard a radio dispatch that a person known as "Chubs" was driving with a suspended license. The officer involved in this case knew Moore by that nickname. The officer confirmed that Moore's license was suspended. Moore's vehicle was stopped and the officer arrested him for driving with a suspended license, which is punishable under Virginia law by a year in jail and a \$2,500 fine. During the "incident to arrest" search, police found 16 grams of crack cocaine and \$516 in cash.

Under Virginia law, driving on a suspended license, like some other misdemeanors, is not an arrestable offense. There are some exceptions to this, but Virginia believes a summons should be issued rather than an arrest.

Moore argues that the Fourth Amendment required that the evidence be suppressed and that the search could not be justified as "incident to arrest." The Virginia Supreme Court agreed with Moore and the State of Virginia appealed to the U.S. Supreme Court.

ISSUE:

Does a police officer violate the Fourth Amendment by making an arrest based on probable cause but prohibited by state law?

HELD: No - - when states go above the Fourth Amendment minimum, the Constitution's protections concerning search and seizure remain the same.

REASONING:

1. States remain free to impose higher standards on searches and seizures than required by the Federal Constitution, but regardless of state rules, police could search a lawfully seized vehicle as a matter of federal constitutional law.

2. Warrantless arrests for crimes committed in the presence of an arresting officer are reasonable under the Constitution, and while the States are free to regulate such arrests however they desire, state restrictions do not alter Fourth Amendment's protections.

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