



# *DPS Legal Review*

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## **FOURTH AMENDMENT'S MEANING DOES NOT CHANGE WITH LOCAL ENFORCEMENT PRACTICES**

Two Portsmouth, Virginia police officers stopped a car driven by the Defendant. They had heard over the police radio that a person known as "Chubs" was driving with a suspended license, and one of the officers knew the Defendant by that nickname. They verified that the Defendant's license was suspended and arrested him for the misdemeanor of driving on a suspended license. The officers subsequently searched the Defendant and found that he was carrying 16 grams of crack cocaine and \$516 in cash.

Under Virginia law, the officers should have issued the Defendant a summons instead of arresting him. In that state, driving on a suspended license is not an arrestable offense except as to: 1) those who fail or refuse to discontinue the violation, 2) those whom the officer reasonably believes to be likely to disregard the summons, or 3) those likely to harm themselves or others. The Defendant was charged with possessing cocaine with intent to distribute.

He moved to suppress the evidence. Although Virginia law does not require suppression of evidence obtained in violation of state law, the Defendant argued that the evidence should be suppressed based upon the Fourth Amendment.

**HOLDING:** The Supreme Court held that, when officers have probable cause to believe that a person has committed a crime in their presence, the Fourth Amendment permits them to make an arrest and to search the suspect to safeguard evidence and ensure their own safety. In reaching this holding, the Court looked to statutes and common law of the founding era to determine the norms that the Fourth Amendment was meant to protect. The Court noted that the immediate object of the Fourth Amendment was to prohibit the general

warrants and writs of assistance that English judges had employed against the colonists.

The Court held that neither case law nor commentaries support the view that the Fourth Amendment was intended to incorporate statutes. When a State chooses to protect privacy beyond the level that the Fourth Amendment requires, it is a matter of state law. A State is free to prefer one search-and-seizure policy among the range of constitutionally permissible options, but its choice of a more restrictive option does not render the less restrictive ones unreasonable, and, hence, unconstitutional. Warrantless arrests for crimes committed in the presence of an arresting officer are reasonable under the Constitution, and states are free to regulate such arrests.

However, state restrictions do not alter the Fourth Amendment's protections. In this case, the arrest rules that the officers violated were those of Virginia, and it is not the province of the Fourth Amendment to enforce state law. That Amendment does not require the exclusion of evidence obtained from a constitutionally permissible arrest. *Virginia v. Moore*, \_\_\_ U.S. \_\_\_, 2008 WL 1805745 (U.S.).

## **IMPLIED CONSENT/ DESIGNATION OF A SPECIFIC TEST IS UNNECESSARY**

A Georgia State Trooper was called to investigate a one-vehicle crash in Carroll County. The vehicle had gone off the road into a wooded area and hit a tree. The driver was not in the car, but he was identified by a bystander. The driver claimed that he had swerved to miss a limb that was hanging from a tree. The Trooper noticed the strong odor of an alcoholic beverage. However, the driver, who was very loud and talkative, denied consuming any alcohol. The Trooper asked the driver to perform a series of field-sobriety tests. Based upon those tests, the Trooper determined that the driver was under the influence of alcohol. He administered a portable Alco sensor test

which showed the driver was positive for alcohol.

The Trooper arrested the driver and read the implied consent notice to him. He did not tell the driver which test would be administered. Instead, he allowed the driver to designate the test that he wanted to take. The driver asked for a blood test. Thereafter, the Trooper took him to a local hospital for the test. Based on the results, the driver was arrested on numerous charges. At trial, his motion to suppress the blood test was denied, and he was convicted. He appealed and argued that the Trooper failed to strictly comply with the implied consent law since he did not designate a specific test to be taken.

**HOLDING:** The Court held that the driver was under notice that the state administered test would be of his blood, breath, urine, or other bodily substances. The notice given was sufficiently accurate to permit the driver to make an informed decision about whether to consent to testing. The Trooper's failure to designate the test to be taken did not change the substance or meaning of the warning in the Implied Consent Notice. Collins v. State, \_\_\_ S.E.2d \_\_\_, 2008 WL 747629 (Ga. App.).

### **FUNERAL PICKETING STATUTE CHALLENGERS LACKED STANDING**

The Plaintiffs mounted a constitutional challenge to two provisions of Georgia's funeral picketing statute. They argued the provisions violated the Free Speech and Free Assembly Clauses of the First Amendment and the Due Process Clause of the Fourteenth Amendment.

**HOLDING:** The Court held that the Plaintiffs lacked standing because they had no real risk of being prosecuted since they did not intend to impede, disrupt, disturb, or interfere with a funeral service. Additionally, they did not allege that they had been threatened with arrest or informed that the statute would be interpreted in a manner so as to prohibit their planned activities. Hood v. Perdue, \_\_\_ F.Supp2d \_\_\_, 2008 WL 761088).

### **INQUIRING MINDS**

**QUERY:** Is the repeated failure to wear a seatbelt a basis for arrest in lieu of issuing a citation?

**ANSWER:** No. Pursuant to O.C.G.A. § 40-8-76.1(e)(1), failure to wear a seatbelt is not a criminal act or a violation of any ordinance.

**QUERY:** May Troopers called to **serve** as **private citizens** on a jury or a grand jury accept a per diem?

**ANSWER:** Yes, and the Trooper should request **jury leave**.

**QUERY:** Do funeral processions have the right of way at intersections?

**ANSWER:** Yes, subject to the following conditions and exceptions found in O.C.G.A. §40-6-76: 1) operators of vehicles in a funeral procession must yield the right of way upon the approach of an authorized emergency or law enforcement vehicle giving audible and visual signals and 2) operators of vehicles in a funeral procession shall yield the right of way when directed to do so by a traffic officer. Further, note that: 1) funeral processions escorted by law enforcement officers have the right of way, 2) the operator of a vehicle not in a funeral procession shall not interrupt a funeral procession except when authorized to do so by a traffic officer, 3) the operator of a vehicle that is not in the funeral procession shall not join a funeral procession to secure the right of way, and 4) the operator of a vehicle that is not in a funeral procession shall not attempt to pass vehicles in a funeral procession on a two-lane highway.

### **ALS REMINDERS**

⊗ Some of the factors that courts consider when determining the validity of a roadblock include: 1) whether all vehicles were stopped, and 2) whether the delay to the motorist is minimal. It is important that a predetermined plan be implemented by the supervisor regarding what to do if traffic starts to back up and it becomes necessary to allow some cars to proceed through the roadblock without being stopped. Allowing some cars to proceed without being stopped may become necessary in order to comply with the requirement of a minimum delay to the motorist. This plan needs to be determined by the supervisor prior to beginning the roadblock. (See State v. Manos, 237 Ga. App. 699 (1999).

### **QUOTABLE WISDOM WORKS**

**"Be not afraid of greatness: some are born great, some achieve greatness, and some have greatness thrust upon them ."** – William Shakespeare

Published with the approval of Colonel Bill Hitchens. Legal Services: Melissa Rodgers, Director, Lee O'Brien and Jacqueline Bunn, Deputy Directors, and Dee Brophy, ALS Attorney. Send questions/comments to [jbunn@gsp.net](mailto:jbunn@gsp.net).