

Recent Case

Virginia v. Moore

(2008) __ U.S. __ [2008 WL 1805745]

Issue

Can officers search a suspect incident to his arrest if, per state law, they should have cited and released him?

Facts

Two officers in Portsmouth, Virginia made a traffic stop on Moore because they knew that his driver's license had been suspended. Although Virginia law requires that officers cite and release people arrested for this offense, the officers decided to make a custodial arrest. So they searched him incident to the arrest and, in the process, found crack cocaine.

Moore claimed the cocaine should have been suppressed because the search violated the Fourth Amendment. The trial court disagreed, and Moore was convicted of possession with intent to distribute.

Discussion

Officers may search a suspect incident to his arrest if, (1) there was probable cause to arrest; (2) officers would be transporting him to jail, a police station, or detox facility; and (3) the search was contemporaneous with the arrest, which essentially means it occurred near the time of arrest.¹

It was the second requirement that was at issue in *Moore* because, as noted, Virginia law states that officers may not transport a suspect who is arrested only for driving on a suspended license.² For this reason, Moore argued that the search violated the Fourth Amendment and that his cocaine should have been suppressed.

The United States Supreme Court pointed out, however, that searches do not violate the Fourth Amendment merely because they were unlawful

under state law. Instead, what matters is whether the officers' actions were "reasonable," as that term is interpreted in cases applying the Fourth Amendment. And because all three requirements for a "reasonable" search incident to arrest were met, the evidence was admissible.

Comment

There is nothing new here. The Court essentially addressed the same issue in 2001 in the case of *Atwater v. City of Lago Vista*.³ The only difference being that in *Atwater* the applicable state law expressly permitted custodial arrests for violations of the statute in question, while in *Moore* the law expressly prohibited them. But it didn't matter because, as the California Supreme Court pointed out in discussing *Atwater*, "[S]o long as the officer has probable cause to believe that an individual has committed a criminal offense, a custodial arrest—even one effected in violation of state arrest procedures—does not violate the Fourth Amendment."⁴

It should be noted, however, that in both cases the officers' actions were imprudent. The Court in *Atwater* mentioned it, saying "the physical incidents of arrest were merely gratuitous humiliations imposed by a police officer who was (at best) exercising extremely poor judgment." And the California Supreme Court noted that violations of state statutes can result in civil suits and departmental discipline.⁵

POV

¹ See *United States v. Robinson* (1973) 414 U.S. 218; *Gustafson v. Florida* (1973) 414 U.S. 260.

² NOTE: There are certain exceptions to this statute, but they are not relevant here.

³ (2001) 532 U.S. 318.

⁴ *People v. McKay* (2002) 27 Cal.4th 601, 618.

⁵ *People v. McKay* (2002) 27 Cal.4th 601, 618-9.

¹ *Tamborino v. Superior Court* (1986) 41 Cal.3d 919, 924.

² See *Massiah v. United States* (1964) 377 U.S. 201; *Moran v. Burbine* (1986) 475 U.S. 412, 428.

³ See *Texas v. Cobb* (2001) 532 U.S. 162; *People v. Slayton* (2001) 26 Cal.4th 1076, 1081.

⁴ (1971) 6 Cal.3d 375, 383-4.

⁵ (1978) 21 Cal.3d 471, 474.

⁶ (1979) 442 U.S. 707.

⁷ *Davis v. United States* (1994) 512 U.S. 452, 459.

⁸ See *North Carolina v. Butler* (1979) 441 U.S. 369, 374; *People v. Johnson* (1969) 70 Cal.2d 541, 558; *U.S. v. Labrada-Bustamante* (9th Cir. 2005) 428 F.3d 1252, 1262; *U.S. v. Nichols* (6th Cir. 2008) __ F.3d __ [2008 WL 123815].

⁹ **NOTE:** The court did not address the address the ranger's failure to determine whether Rodriguez understood his rights.

¹⁰ (2006) 547 U.S. 103.

¹¹ **NOTE:** In *Randolph*, the Court indicated that a co-tenant's consent would be invalid if "the police have removed the potentially objecting tenant from the entrance for the sake of avoiding possible objection." This was not an issue in *Hudspeth* because, although Hudspeth had been removed from his business and was not present when the officers sought consent from his wife, there was a legitimate reason for his removal; i.e., he had been lawfully arrested and was at, or en route to, jail.

¹² (6th Cir. 2008) __ F.3d __ [2008 WL 495326].

¹³ See *Maryland v. Buie* (1990) 494 U.S. 325, 333.

¹⁴ (2006) 547 U.S. 103.

¹⁵ Emphasis added.

¹⁶ *U.S. v. Hudspeth* (8th Cir. 2008) __ F.3d __ [2008 WL 637638].

¹⁷ See *People v. Duncan* (1986) 42 Cal.3d 91, 105 [production of meth “creates a dangerous environment”]; *People v. Messina* (1985) 165 Cal.App.3d 937, 943 [“the types of chemicals used to manufacture methamphetamines are extremely hazardous to health.”].

¹⁸ **NOTE:** When *Randolph* was announced we wrote that it was a fundamentally unsound decision because it was based on unsubstantiated sociological findings, not the law. Specifically, the justices reported that they had discovered a previously undetected cultural shift pertaining to privacy rights. We pointed out that, by basing their decision on such a nebulous concept, they faced an impossible serious challenge: “How could they write an opinion based on a subtle cultural shift without sounding flaky? They couldn’t. Which explains why their decision—a document representing the refined judgment of the highest court in the United States of America—was based on such shadowy abstractions as ‘commonly held understandings,’ ‘shared social expectations,’ ‘voluntary accommodation,’ ‘social practice,’ ‘social custom,’ ‘customary social understanding,’ the ‘comfort’ level of visitors, and the ‘multiplicity of living arrangements.’” And so it was not entirely surprising that a lower court, such as the one in *Murphy*, would announce that it, too, had detected a cultural shift that needed to be incorporated into the law.

¹⁹ *Lorenzana v. Superior Court* (1973) 9 Cal.3d 626, 629. ALSO SEE *People v. Chavez* (2008) __ Cal.App.4th __ [2008 WL 802633].

²⁰ See *People v. Camacho* (2000) 23 Cal.4th 824, 836.

²¹ See *Brigham City v. Stuart* (2006) 547 U.S. 398, 406.

²² See *Illinois v. Lidster* (2004) 540 U.S. 419, 426; *Maryland v. Buie* (1990) 494 U.S. 325, 331.

²³ See *U.S. v. Mendez* (9th Cir. 2007) 476 F.3d 1077, 1080 [“The arrest occurred only eight minutes after the stop.”].

²⁴ See *U.S. v. Gill* (8th Cir. 2008) __ F.3d __ [2008 WL 190789] [“If an officer develops reasonable suspicion regarding unrelated criminal conduct during the course of a lawful traffic stop, an officer may broaden his inquiry and satisfy those suspicions without running afoul of the Fourth Amendment.”].

²⁵ (11th Cir. 2005) 418 F.3d 1206, 1212, fn.7.

²⁶ *U.S. v. Childs* (7th Cir. en banc 2002) 277 F.3d 947, 953-4.

POV

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