



## **LAW UPDATE GOVERNMENTAL LIABILITY DEFENSE**

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**Virginia v. David Lee Moore**  
**2008 U.S. Lexis 3674**  
**(Decided April 23, 2008)**

### **EDITOR'S NOTE:**

From the perspective of civil liability, this may be the most important search and seizure case decided by the U.S. Supreme Court this term.

### **FACTUAL BACKGROUND:**

On February 20, 2003, two City of Portsmouth Virginia police officers performed a traffic stop on a vehicle operated by David Lee Moore. The officers determined that Moore's license was suspended and arrested him for the misdemeanor of driving on a suspended license, which is punishable under Virginia law, by a year in jail and a \$2,500.00 fine. The arrest violated Virginia state law in that the officers should have issued a summons to Moore instead of arresting him. Officers searched Moore incident to arrest and located 16 grams of crack cocaine and \$516.00 cash on his person. Therefore, in addition to the misdemeanor charge for operating a vehicle with a suspended license, Moore was charged with possession of cocaine with the intent to distribute.

Moore filed a pre-trial Motion to suppress the evidence based upon an alleged violation of the Fourth Amendment. It should be noted that Virginia law does not, as a general matter, require suppression of evidence obtained in violation of state law. Moore specifically argued that his arrest violated the Fourth Amendment because his arrest violated Virginia state law. Moore further argued that even if the federal Constitution permitted the arrest, it did not permit the search.

The Trial Court denied the Motion. After a bench trial, Moore was found guilty and sentenced to a five-year prison term, with one year and six months of the sentence suspended. The conviction was reversed by a panel of Virginia's Intermediate Court, but reinstated by the Court sitting en banc. The Virginia Supreme Court reversed reasoning that the arresting officers should have issued Moore a citation and the Fourth Amendment does not permit search incident to the issuance of a citation.

**ISSUE ON APPEAL:**

Whether a police officer violates the Fourth Amendment by making an arrest based on probable cause but prohibited by State law, or when they conduct a search incident to the arrest?

**DISPOSITION:**

Reversed and remanded.

**DISCUSSION:**

Justice Scalia issued the opinion of the Court in which eight justices joined. Justice Ginsburg issued a concurring opinion.

The Court explained that a state may chose to protect a person's privacy rights beyond the protections afforded by the Fourth Amendment. In fact, states are free to impose higher standards on searches and seizures than those that are required by the Fourth Amendment. Pursuant to the Fourth Amendment, however, whether or not state law authorizes the search or seizure is irrelevant.

The Court held that "warrantless arrests for crimes committed in the presence of an arresting officer are reasonable under the Constitution and that while States are free to regulate such arrests however they desire, state restrictions do not alter the Fourth Amendment protections." Therefore, while Moore's arrest may have violated Virginia law in that a summons should have issued, it did not violate the Fourth Amendment in that it was supported by probable cause.

The Court further held that "[w]hen 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 in order to safeguard evidence and ensure their own safety." Therefore, while Moore's search may have violated Virginia law in that a summons should have issued and Virginia law does not permit a search incident to the issuance of a citation, the search did not violate the Fourth Amendment in that the search occurred incident to a lawful arrest.