VML Insurance Programs

Brief Cases

A Review of Legal Cases and How they Affect Your Jurisdiction

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Greetings from the great Commonwealth. I am happy to report that I am writing this update from Virginia. The courts have remained active. Most notably the court ruling in Moore v. Commonwealth. This is an issue that I have been harping on for a few years now so I encourage you all to pull this case and conduct roll call training on the subject. We are fortunate the court finally sided with law enforcement on this issue but the future offers no guarantees.

Criminal Procedure

Search Incident to Arrest

Moore v. Commonwealth, Record No. 2648-03-1 November 22, 2005 (Court of Appeals of Virginia)

Officers stopped defendant for driving on a suspended operators license and searched him and discovered narcotics. The defendant challenged the search based on the requirement of § 19.2-74 to release him on a summons. While the court agreed that the arrest clearly violated the express language of § 19.2-74, the Court upheld the conviction noting that the statute did not create a remedy such as exclusion of the evidence.

What should I do?

You may recall that I have been addressing this issue for the past few years. This is the first time that an appellate court has upheld a conviction under these facts. The few panels that have addressed the issue so far have suppressed the evidence for the violation of the statute. Bottom line, I would still continue to train on the language of § 19.2-74 and monitor this case to see if the Supreme Court of Virginia will finally rule on this issue.

Statute of Limitations (Misdemeanors)

Foster v. Commonwealth, Record No. 050510 January 13, 2006 (Supreme Court of Virginia)

Defendant was convicted of writing a bad check. She argued that since the prosecution commenced more than one year after the incident the statute of limitations for misdemeanors precluded conviction. The Court disagreed noting that the one year statute of limitation applies to all misdemeanors except petit larceny. § 18.2-181 reads that people who commit the offense of worthless check are deemed to commit larceny. If you read § 18.2-96 it defines petit larceny as amounts under $200. Since the check was under $200 the conviction is really for petit larceny. § 19.2-8 sets the statute of limitations as one year for misdemeanors unless it is petit larceny, which has a five year statute of limitation.

What should I do?

This has to be one of the craftiest opinions that I have ever read but it is based on sound logic. If any misdemeanor statute says that a person who violates the statute is guilty of larceny this increases the statute of limitations to five years. This will apply to a few statutes so I encourage

you to read your crimes against property statutes before you dispose of them based on statute of limitations.

Expectation of Privacy
Robinson v. Commonwealth, Record No. 2539-03-2 January 31, 2006 (Court of Appeals of Virginia)
While patrolling, an officer observed an underage alcohol party at a private residence. He pulled into the driveway and then observed teenagers in the backyard drinking. When they saw him, they dropped their beer, shouted "cops", and ran for the woods. The officer entered the back yard to detain the suspects. He then knocked on the door and found the adult parents inside and arrested them for contributing to the delinquency of a minor. The defendants argued that the officer did not have a right to pull into their driveway nor go into their backyard without a warrant. The Court disagreed noting that the driveway and sidewalk were clearly accessible to the public and there were not any "no trespassing" signs. Once on the property the officers relied on exigent circumstances to enter the backyard.

What should I do?
Notice that the officer did not observe the behavior until he entered the property. The crux is whether you can enter the property without a warrant. The Court felt comfortable approving the conduct of the officer because he was using the typical path that a member of the general public might take to go to the front door. People that do not take steps to prevent others to come on their property implicitly consent to having the public come to their front door. This would have been a different result if the yard was fenced with a sign that said "no trespassing."

Criminal Law

Possession of a Concealed Weapon § 18.2-308
Ohin v. Commonwealth, Record No. 2708-04-1 December 13, 2005 (Court of Appeals of Virginia)
Defendant concealed a knife that was side folding, had a notched handle, a hilt like a sword, and locked when open. The officer testified it was not a dirk, bowie, switchblade, ballistic, or butterfly knife as required by the statute. The defendant argued that it did not fit one of the enumerated types of knife in the statute. The Court disagreed citing the last clause of the statute "or any weapon of the like kind as those enumerated" and convicted the defendant.

What should I do?
Common pocketknives or household knives generally are not considered concealed weapons. However, this case does a great job of emphasizing how a knife that was not on the enumerated list was similar. The officer pointed out the lock position like a switch blade, the hilt like a sword, and the notched handle for better grip when thrusting. This is the kind of articulation you should make when bringing a concealed weapon case involving a knife. These convictions are important because a second offense is a felony.

DUI (Admission of Certificate of Analysis)
Bristol v. Commonwealth, Record No. 1477-04-1 January 31, 2006 (Court of Appeals of Virginia)
Defendant wrecked his motorcycle after a night of drinking. The defendant was taken to a hospital. While being treated the officer told the defendant he was under arrest, read him the implied consent law, and the defendant consented to a blood test. The officer did not physically take him into custody until the results were returned months later. The defendant argued at trial the certificate of analysis was not admissible because he had not been validly arrested before the implied consent had been read. The court disagreed noting the arrest was valid once the defendant submitted to the officer's authority by consenting to the test.

What should I do?
This is an example of how an officer doing the right thing should prevail. The officer was reasonable by not taking a defendant who was being treated immediately in to custody. In order to effectuate a valid arrest you need two things: 1. the officer exercising authority and 2. the suspect submitting to the authority. The subsequent taking into custody of a suspect is not the determining factor in an arrest.

"About The Author"
Russell McGuire heads The McGuire Consulting Group, LLC, a constitutional and criminal law training and consulting company. He has presented at conferences, lectured in seminars, and trained entire departments on various legal subjects. Currently, he is a special prosecutor in the office of the Attorney General. He served as an Assistant Commonwealth Attorney for the City of Richmond. Russell holds a Juris Doctor, cum laude, from the Thomas M. Cooley Law School and Bachelor of Arts degrees in English & History from Virginia Military Institute, distinguished military graduate.