

Friday, October 31, 2008

Halloween treats galore today from Virginia's Supreme Court.

Image from Virginia Forestry Dept's website. Halloween treats came before sundown today with the following favorable criminal rulings from Virginia's Supreme Court, which issues opinions around every six weeks: - Virginia's Supreme Court reversed a rape conviction where not more than a scintilla of evidence supported a jury instruction that the jury could consider the defendant's departure from the alleged victim's home, where Defendant claimed consensual sexual activity and where the evidence showed the Defendant's departure complied with the complainant's telling him to leave. A retrial is required, because the erroneous jury instruction was not harmless error: "[I]f one cannot say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error, it is impossible to conclude that substantial rights were not affected. . . . If so, or if one is left in grave doubt, the conviction cannot stand.' Clay v. Commonwealth, 262 Va. 253, 260, 546 S.E.2d 728, 731 (2001) (omissions in original) (quoting Kotteakos v. United States, 328 U.S. 750, 764-65 (1946))... - Turman v. Virginia. - When cops ask if any drugs, weapons, guns, or nuclear devices are in the car, stay silent, or else ask if you are free to leave. If you do not follow that admonition, pursue a Miranda challenge. Here, Defendant Hasan drove a car matching a robbery lookout. In 2005 in Dixon, the Virginia Supreme Court said that handcuffing by itself does not automatically require Miranda warnings, nor does placing the suspect in a police car without anything more. In Mr. Hasan's case, the Supreme Court confirmed: "However, several factors not present in Dixon distinguish this case. For example, the defendant in Dixon did not face drawn weapons or a readily available K-9 unit, and at the time of the custodial interrogation, only one trooper was interacting with the defendant. See id. at 37-38, 613 S.E.2d at 399-400. In contrast, Hasan was confronted during questioning with both drawn guns and a K-9 unit close by, and was surrounded by a 'cone' consisting of multiple officers." With the foregoing factors present, Mr. Hasan confirmed the presence of a handgun in his car. The Virginia Supreme Court granted Mr. Hasan a retrial, where he had entered a guilty plea conditioned on his right to a retrial upon beating his suppression issue on appeal. Hasan v. Virginia. - Mere presence in a drug-filled house does not automatically make one guilty of being a principal in the second degree. However, if the house is raided, you are likely to be dragnetted with everyone else, only possibly to benefit from the relief of this Brickhouse decision if the jury acquits you, but you may end up pleading guilty in advance to hedge your bets, as so many innocent people do. Brickhouse v. Virginia. - Judges cannot in 2006 interpret their words from 2005 any more harshly than they did in 2005. Consequently, probationer Valerie White's first-time drug offender disposition could not be revoked where her alleged violation of the general good behavior probation condition succeeded the time period that the judge had originally set for being of general good behavior, and where the judge never said otherwise on the record. White v. Virginia. - You must remember this: A peeling inspection sticker without more is just a peeling inspection sticker. Thus, the traffic stop of Matthew Moore was unconstitutional, as was, by extension, the search that found drugs and a handgun in the car. Congratulations, Mr. Moore. Moore v. Virginia. - Tipping the scales against an anonymous tipper. The Virginia Supreme Court overturned the stop of Joseph Harris's car --which led to a drunk driving conviction -- on an anonymous tip, for the following primary grounds: "In this case, the anonymous tip included the following information: Joseph Harris, described as wearing a striped shirt, was intoxicated and driving a green Altima with a partial license plate number of 'Y8066,' southward in the 3400 block of Meadowbridge Road. The informant in this case was not known to the police nor did he or she personally appear before a police officer. Thus, the informant was not subjecting himself or herself to possible arrest if the information provided to the dispatcher proved false. See Code Â§ 18.2-461. In other words, the informant was not placing his or her credibility at risk and could 'lie with impunity.' J.L., 529 U.S. at 275 (Kennedy, J., concurring). The informant provided information available to any observer, whether a concerned citizen, prankster, or someone with a grudge against Harris. See Jackson, 267 Va. at 679, 594 S.E.2d at 602. The tip received by Officer Picard failed to include predictions about Harris' future behavior. Thus, the anonymous tip, in this case, lacked sufficient information to demonstrate the informant's credibility and basis of knowledge. Such an anonymous tip cannot, of itself, establish the requisite quantum of suspicion for an investigative stop. "When viewed in the context of the anonymous tip, Harris's act of slowing his car at an intersection, or of slowing before stopping at a red traffic signal, did not indicate that he was involved in the criminal act of operating a motor vehicle under the influence of alcohol. Driving to the side of the road and stopping may be subjectively viewed as unusual, but that conduct was insufficient to corroborate the criminal activity alleged in the anonymous tip. See Barrett, 250 Va. at 248, 462 S.E.2d at 112. Therefore, we hold that Officer Picard's observations, when considered together with the anonymous tip, were not sufficient to create a reasonable suspicion of criminal activity, and that, therefore, Harris was stopped in violation of his rights under the Fourth Amendment. Thus, the circuit court erred in denying Harris's motion to suppress." Harris v. Virginia. Thanks to the Virginia Supreme Court justices who voted with the majorities in the foregoing decisions from today.

Posted by Jon Katz in Criminal Defense at 00:00