

Thursday, January 17, 2008

Do not Pringle-ize Moore, part two.

Â Bill of Rights.Â (From the public domain.)Â On November 19,Â 2007, I wrote: In early 2006, the clouds parted, and the Virginia Supreme Court blessed criminal suspects with Moore v. Commonwealth, 272 Va. 717Â (2006). Moore provides that the issuance of a criminal summons does not permit a police search. This is a particularly significant holding, when considering that summonsesÂ most commonlyÂ commence misdemeanor prosecutions in Virginia.Â Unfortunately, rather than leaving well enough alone, the United States Supreme Court granted certiorari review in Moore . Hopefully the Supreme Court will leave Moore unharmed, unlike the damage done in Maryland v. Pringle, 540 U.S. 366 (2003), which reversed an excellent Fourth Amendment decision by Maryland's Court of Appeals, as if crushing the Court of Appeals' PringleÂ decision like a potato chip. Â Thanks to Gideon and SCOTUS Blog for giving a rundown on the January 14 oral arguments (see transcript)Â in this Moore case, and to SCOTUS Blog for having provided a running update on the case. Â Thanks to Gideon for drawing attention to this part of the argument: Â JUSTICE SCALIA: So any Federal employee can go crashing around conducting searches and seizures?Â MR. McCULLOUGH [Virginia Dep. Solicitor General]: So long --Â JUSTICE SCALIA: So long as he has probable cause?Â MR. McCULLOUGH: That's correct.Â JUSTICE SCALIA: That's fantastic.Â (Laughter.)Â JUSTICE SCALIA: Do you really think that?Â MR. McCULLOUGH: I think if there is State action, it doesn't matter that you're wearing a badge or that you've gone through the police academy.Â JUSTICE SCALIA: Or that you are an administrative law judge at the, you know, Bureau of Customs? It doesn't matter?Â MR. McCULLOUGH: I think that's right. That if you have -- if the State --Â JUSTICE SCALIA: What about a janitor? You're a janitor, a federally employed janitor.Â MR. McCULLOUGH: Your Honor --Â JUSTICE SCALIA: His neighbor is growingÂ marijuana, and he's just as offended as a Supreme Court Justice would be. Can he conduct a search?Â MR. McCULLOUGH: I think if he's doing it on behalf of the State, the answer is yes.Â JUSTICE SCALIA: Wow.Â Although Justice Scalia would not be on the bench if I had my choice, kudos to him for the above-quoted part of the oral argument. Â Once again, do not Pringle-ize Moore. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00