APPELLATE UPDATE

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ANNOUNCEMENTS

On rehearing, in *Despain v. Bradburn* (April 10, 2008), in response to the United States Supreme Court's decision in *Riegel v. Medtronic* (February 20, 2008), the court held that claims against manufacturers of medical devices are preempted by the Medical Device Amendment to the FDA.

On April 17th, the supreme court published for comment proposed changes to various rules affecting civil practice. The comment period ends June 1, 2008. A copy of the *per curiam* order was included in the weekly mailout.

CRIMINAL

Rhodes v. State: **[closing argument; mistrial]** Appellant was convicted of rape and sexual assault. Although appellant was being tried for crimes committed against a twelve-year-old victim, another girl testified without objection that she, too, was raped by appellant under similar circumstances when she was fifteen years old. During the sentencing phase of appellant's trial, the prosecutor argued that justice required a sentence of at least twenty years, "ten for each girl." Appellant objected and moved for a mistrial. The trial court denied appellant's request and gave a curative instruction to the jury. In the admonishment, the circuit court directed the jury to disregard the prosecutor's argument and explained that in considering the seriousness of the punishment, it could consider the fact that there was an allegation that appellant committed another offense. The court further reminded the jury that its punishment must be based upon the facts in this particular case and that the allegation by the second victim would be considered in a separate case. Upon review, the Court of Appeals, concluded that the trial court's admonishment was even-handed and clear, and that it was sufficient to remove any possible prejudice that could have resulted from the prosecutor's argument. (Pope, S.; CACR 07-328; 4-2-08; Pittman).

State v. Crawford: **[*nol prosequi*]** The dismissal of a charge by *nol prosequi* does not bar a subsequent prosecution for the same offense. **[speedy trial]** The time period between the *nol-prossing* of a charge and its subsequent refiling is excluded from computing the time for speedy-trial purposes when the charge was *nol-prossed* for good cause. (Reynolds, D.; CR 07-919; 4-3-

08; Corbin).

Efird v. State: **[404(b)]** The trial court erred when it permitted a witness to testify that appellant had engaged in sexual acts with his half-brother seventeen years prior to the trial because the testimony described actions that were dissimilar in character and temporally removed from the crimes for which appellant was charged, the testimony did not fall under any exception to Rule 404 (b), and the testimony only proved appellant's bad character. (Erwin, H.; CACR 07-885; 4-9-08; Robbins).

State v. Hammame: **[party; forfeiture proceeding]** The seizing agency is not a party to an *in-rem* proceeding pursuant to Ark. Code Ann. § 5-64-505. In such a proceeding, the prosecuting attorney brings the action on behalf of the State and serves the known property owners and interest holders. The seizing agency is not a known property owner or interest holder. The seizing agency is responsible for custody and inventory of the seized property, but may not dispose of it except as authorized by a court. Because the seizing agency is not a party to the forfeiture proceeding, it is not precluded from serving a summons on the known property owners or interest holders. (Epley, A.; CA07-163; 4-9-08; Gladwin).

Phavixay v. State: **[404 (b)]** During appellant's trial, the court allowed a police informant to testify that he previously purchased narcotics from appellant. The testimony described a separate transaction from the purchase for which appellant was being tried. On appeal, the Supreme Court concluded that although the two transactions were similar and in close proximity to one another, the first transaction was not independently relevant of the second transaction. Additionally, the Court concluded that the two transactions were fairly routine drug transactions and the testimony did not show a unique methodology. Finally, the Supreme Court concluded that this testimony was precisely the type of evidence that Rule 404 (b) was designed to exclude. (Fitzhugh, M.; CR 07-585; 4-10-08; Danielson).

Seely v. State: **[hearsay; Confrontation Clause]** Statements are testimonial when the circumstances objectively indicate that the primary purpose of the statement is to establish or prove past events potentially relevant to later criminal prosecution. If a statement is testimonial, it cannot be admitted unless the witness is unavailable to testify and the defendant had a prior opportunity to cross-examine the witness. Where a statement is made to a governmental official, it is presumptively testimonial, but the statement can be shown to be nontestimonial where the primary purpose of the statement is to obtain assistance in an emergency. Where a statement is made to a nonofficial, it is presumptively nontestimonial, but can be shown to be testimonial if the primary purpose of the statement is to create evidence for use in court. In appellant's case, the court allowed the victim's mother and social worker to testify about statements that were made by the victim. The testimony included the victim's allegation that appellant raped her. The victim, who was four, was found incompetent to testify at the trial. The Supreme Court, applying the "primary-purpose standard" to the case, concluded that the trial court properly admitted the testimony because the victim's statements to her mother and to her social worker were nontestimonial. (Langston, J.; CR 07-1063; 4-10-08; Brown).

Stephenson v. State: **[sufficiency of the evidence; capital murder; terroristic act]** There was substantial evidence to support appellant's convictions for capital murder and committing a

terroristic act. (Humphrey, M.; CR 07-1080; 4-10-08; Corbin).

Flowers v. State: **[sufficiency of the evidence; capital murder]** There was substantial evidence to support appellant's capital-murder conviction. **[hearsay]** An out-of-court statement is not hearsay under Rule 801(c) of the Arkansas Rules of Evidence, when it is offered to show the basis for the witness's actions. **[Rule 701 of the Arkansas Rules of Evidence]** A witness not testifying as an expert may provide testimony in the form of opinions and inferences if those opinions and inferences are rationally based on the perception of the witness and are helpful to a clear understanding of the witness's testimony or a determination of a fact in issue. **[expert testimony]** If some reasonable basis exists which demonstrates that the witness has knowledge of the subject beyond that of ordinary knowledge, the evidence is admissible as expert testimony under Rule 702 of the Arkansas Rules of Evidence. (Griffin, J.; CR 07-319; 4-10-08; Glaze).

Flowers v. State: **[sufficiency of the evidence; capital murder; aggravated robbery]** There was substantial evidence to support appellant's convictions for capital murder and aggravated robbery. **[appellate review]** The Supreme Court will not consider a challenge to an allegedly ambiguous jury instruction when the appellant has failed to proffer an instruction that attempts to correct the flaw.
(Sims, B.; CR 07-851; 4-10-08; Hannah).

Clark v. State: **[lesser-included offenses]** Aggravated robbery is not a lesser-included offense of attempted capital murder and first-degree battery is not a lesser-included offense of aggravated robbery. (Wyatt, R.; CR 06-1397; 4-10-08; Danielson).

Solis v. State: **[default judgment]** The circuit court properly granted a default judgement in favor of the State. (Finch, J.; 07-561; 4-17-08; Danielson).

Marshall v. State: **[right to a twelve-person jury]** The trial court did not err when it allowed the jury to deliberate and reach a verdict with only eleven members because prior to the start of the trial, the appellant agreed to go forward with a trial in which alternate jurors were not selected. Specifically, the appellant agreed to start the trial with a twelve-person jury and end with however many of those jurors survived to reach a verdict, thus eliminating the need for alternate jurors. Therefore, when it was discovered that one of the jurors was the appellant's cousin and she was excused from the jury, thereby leaving eleven jurors, the appellant could not claim error and receive a new trial. (Chandler, L.; CACR 07-708; 4-23-08; Marshall).

Robinson v. State: **[waiver of *Miranda* rights]** After appellant was taken into custody, read his *Miranda* rights, and indicated that he understood those rights, law enforcement officials asked him "why are you running from the police." Appellant responded "I don't want to say anything right now." Thereafter, the law enforcement official asked appellant why he would "shoot somebody over a woman." In responding to this question, appellant gave an incriminating statement. Prior to trial, appellant sought to suppress this statement because it was obtained after he invoked his right to remain silent. The trial court denied appellant's motion to suppress. Reversing the trial court on appeal, the Supreme Court explained that if the defendant indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. An indication that a defendant wishes to remain silent is an invocation

of his *Miranda* rights. Once the right to remain silent is invoked, it must be scrupulously honored. (Erwin, H.; CR 07-887; 4-24-08; Gunter).

Boldin v. State: **[sufficiency of the evidence; first-degree murder; aggravated robbery]** There was substantial evidence to support appellant's convictions for first-degree murder and aggravated robbery. **[discovery]** Because appellant failed to disclose a specific defense to the State prior to trial, he was not permitted to introduce evidence to establish an "accomplice defense" during the trial. **[Rule 2.2 of the Arkansas Rules of Criminal Procedure]** Rule 2.2 of the Arkansas Rules of Criminal Procedure prohibits an officer from insinuating that a person is required to assist an officer. (Arey, D.; CR 07-1024; 4-24-08; Imber).

Mainard v. State: **[sufficiency of the evidence; second-degree murder**] Appellant failed to preserve his sufficiency-of-the-evidence argument for appeal. **[jury instructions]** Because the jury instruction that appellant proffered was an incorrect statement of the law, the trial court's refusal to give the instruction was not an abuse of discretion. (Fitzhugh, M.; CACR 07-823; 4-30-08; Heffley).

Gikonyo v. State:**[sufficiency of the evidence; internet stalking of a child]** There was substantial evidence to support appellant's conviction of internet stalking of a child. **[Vienna Convention on Consular Relations]** The Vienna Convention on Consular Relations is not domestically enforceable. **[expert testimony]** The trial court did not err when it allowed a witness, whose testimony was helpful to the jury, to testify as an expert. (Arnold, G.; CACR 07-00609; 4-30-08; Baker).

Weisenfels v. State: **[mistrial]** Appellant was convicted of driving while intoxicated. At trial, the investigating officer was asked about various field-sobriety tests. In responding to a question about whether the HGN test was a "pass/fail" test, the officer stated "Yes, there's a pass/fail, four or more of those symptoms indicate a blood-alcohol content of zero point zero eight hundreds for weigh–." Upon hearing this testimony, appellant requested a mistrial. Appellant argued that the officer was permitted to testify about the test but he could not testify about how the test is related to the percentage of blood-alcohol content. The trial court denied appellant's request and instructed the jury to disregard the officer's testimony. Because the officer's testimony did not equate appellant's blood-alcohol level with failing the HGN test, or with a finding that appellant was intoxicated, and because the trial court instructed the jury to disregard the officer's testimony, the circuit court did not abuse its discretion in refusing to grant a mistrial. **[expert witness]** The trial court did not abuse its discretion by giving the jury an expert-witness instruction because the testimony from the law enforcement officials, who had knowledge beyond that of ordinary knowledge and specialized training that aided the jury, offered expert testimony. (Storey, W.; CACR 07-1121; 4-30-08; Hart).

CIVIL

Freeman v. Brown Hiller: **[injunction/covenant not to compete]** Noncompetition agreement signed by insurance agent was enforceable after she left her employer and went to work for another insurance company. Former employer had an interest in protecting its confidential

information, such as customer lists. The nondisclosure and noncompetiton provisions were not too broad. (Cox, J.;CA 07-717; 4-2-08; Robbins)

Chiodini v. Lock: **[appealable order]** Pro se litigant seeking injunction could not appeal order denying him a hearing because it was not an appealable order. (Weaver, T.; SC 07-969; 4-3-08; Glaze)

Bevans v. Deutsche Bank: **[appealable order/nonsuit counterclaims]** An order providing for the nonsuit of counterclaims while entering a judgment on the plaintiff's claims is not a final appealable order because the party is free to refile the counterclaims. (Fox, T.; SC 07-340; 4-3-08; Imber)

RWR Properties v. Mid-State Trust: **[tax sale/notice]** Mortgagee failed to receive notice of the tax sale; consequently, court correctly voided the Commissioner's limited warranty deed to purchaser at the tax sale. (Dennis, J.; CA 07-992; 4-9-08; Marshall)

DeJulius v. Sumner: **[class settlement/intervention]** Appellant was not eligible to intervene because he did not show that his interest would be impaired. (Hanshaw, L.; SC 07-748; 4-10-08; Imber)

England v. Eaton: **[adverse possession]** Adverse possession as to part of the tract was established, but trial court erred as to the manner he split the property, which was arbitrary and not based on the evidence. (Storey, W.; CA 07-700; 4-16-08; Marshall)

Primus Financial Services v. Seitz: **[disposal of collateral]** Creditor had no duty to notify debtor of the pending sale of collateral because the sale was ordered by an unrelated third party. Towing company had the duty to notify under the statute , which it in fact did. Provisions of the UCC were deemed by statutory language not to be applicable. (Phillips, G.; CA 07-1089; 4-16-08; Pittman)

Brown v. National Health Care of Pocahontas: **[limitations]** When suit was filed against certain of the defendants, special administrator was not appointed to serve and therefore had no standing.
(Erwin, E.; CA 07-583; 4-16-08; Bird)

Sykes v. Williams: **[failure to carry workers comp ins.]** Ark. Code Ann. Section 11-9-105(b) is not a strict liability statute. If an employer fails to carry workers comp insurance, an employee may bring suit against the employer, but the employee must prove negligence on the part of the employer. (Boling, L.; SC 07-918; 4-17-08; Imber)

Jones v. Flowers: **[attorneys fees]** Regardless whether a plaintiff cites 42 U.S.C. section 1983 or 1988 in his original pleadings, a successful constitutional challenge on a civil rights claim is a proceeding under those statutes and supports a request for an award of attorneys fees. (Fox, T.; SC 07-409; 4-17-08; Glaze)

Bailey v. State Board of Collection Agencies: **[admin hearing]** Hearsay evidence constitutes

competent evidence in an administrative proceeding. (Humphrey, M.; SC 07-896; 4-17-08; Glaze)

National Home Centers v. Coleman: **[lis pendens]** A lis pendens filed in conjunction with a creditor's foreclosure action serves to bar the future claim of a materialman when its lien is filed after the filing of the lis pendens, and the materialman is not joined in the foreclosure action. (Moody, J.; SC 07-977; 4-17-08; Imber)

Aviation Cadet Museum v. Hammer: **[nuisance]** Evidence supported finding that the manner in which the defendant operated its airport created the possibility of serious accident and constituted a nuisance. Injunction was proper. (Lineberger, J.; SC 07-830; 4-17-08; Hannah)

*Ingersoll-Rand v. El Dorado Chemical Co.***[incorporation by reference]** Exculpatory limitation of liability clause was not properly incorporated by reference in the parties' contract to be enforced. It was not clearly and specifically made part of the contract. (Anthony, C.; SC 07-606; 4-17-08; Brown)

Nash v. Landmark Storage, LLC: **[Landlord negligence]** Landlord did not assume a duty to protect tenant's property from the criminal acts of third parties. In fact the lease excluded any liability. In the absence of any duty, landlord could not be liable for negligence.(Brantley, E.; CA 07-1138; 4-23-08; Baker)

McSparrin v. Direct Ins.: **[insurance]** Incident was excluded from policy coverage. Insured's conduct in intentionally and repeatedly ramming into boyfriend's vehicle, although she was intoxicated at the time, did not give rise to duty on insurer to defend her. (Lindsay, M.; SC 07-934; 4-24-08; Glaze)

Chartone, Inc. v. Raglon: **[class certification]** Court properly certified class action against health-information management company, regarding its fees for copying and mailing records. The class definition presented a feasible means for identifying class members. (Wyatt, R.; SC 07-940; 4-24-08; Corbin)

Graves v. Bullock: **[punitive damages]** Amount of punitive damages was properly reduced. On the issue of reprehensibility, the defendant's conduct "falls somewhere in the middle" on the reprehensibility scale. (Henry, D.; CA 07-752; 4-30-08; Glover)

DOMESTIC RELATIONS

Harrison v. Harrison: **[change in custody]** The trial court denied a change of custody from the appellee/father to the appellant/mother, finding that the mother had failed to meet her burden of proving a material change in circumstances and that it would be in the child's best interest to remain in her father's custody. The Court of Appeals found that the appellant/mother had proved a material change in circumstances by proof of material facts that were not presented to or not known by the trial judge when the original custody order was entered. The Court said that once a material change of circumstances was established, the trial court had the duty to weigh

the material changes and consider the best interest of the child. The Court reversed and remanded for an order consistent with its opinion. (VanAusdall, R.; No. CA 07-587; 4-9-08; Baker)

Payne v. France: **[personal jurisdiction]** The circuit court granted appellee's motion for summary judgment and found that the appellant is the father of appellee's child, ordering him to pay $1,500 a month in child support. He contends that the circuit court erred in exercising personal jurisdiction over him. The Supreme Court pointed out pertinent provisions of UIFSA, Ark. Code Ann. §9-17-201 (Repl. 2008), governing when an Arkansas court may exercise personal jurisdiction over a nonresident individual. The Court also looked at Arkansas's long-arm statute, Ark. Code Ann. §16-4-101 (Repl. 1999), and at the Fourteenth Amendment. The Court noted that (1) the appellant agreed to voluntarily submit to a paternity test, (2) administered in Arkansas. (3) He drove to Little Rock from Texas for the test, (3) made a sales call to a Little Rock business while in the city, (4) went to the lab for the test, and (5) went to lunch with the appellee at a Little Rock restaurant. The Supreme Court held that these contacts were sufficient to satisfy the requirements of the Due Process Clause and that the circuit court had personal jurisdiction over him. (McGowan, M.; No. SC 07-242; 4-10-08; Danielson)

Brock v. Eubanks: **[visitation; contempt]** Appellant was permanently restrained from interfering with appellee's visitation with their minor child and she was held in contempt of court. She argued that the trial court erred because (1) no testimony was taken to support the findings of contempt, (2) she was not given adequate time to respond to the allegations of events less than ten days before the hearing and (3) the order violates separation of powers by allowing police officers to decide whether she is in contempt of the restraining order. In affirming, the Court of Appeals said that her first two arguments were disingenuous because (1) no testimony was taken but the evidence was in the form of affidavits, which is permitted by ARCivP 43(c), to show her interference with visitation; and (2) regarding notice, there were multiple instances of contempt by refusal to permit visitation, including some after the show-cause order had issued. Finally, on her separation-of-powers argument, the Court said the order merely permits law enforcement to arrest appellant upon the reasonable belief that she has violated the restraining order, which they are already authorized to do by rule and statute. (Maggio, M.; No. CA07-560; 4-23-08; Pittman)

Hendrix, et al. v. Black, et al.: **[paternity; grandparent visitation; adoption]** This case arose as a stepfather adoption of the child, K.T., whose biological father died, without knowledge of the pregnancy, before she was born. The mother subsequently married the appellee, then had the decedent judicially declared K.T.'s father in a paternity action. After that, the mother's husband filed an adoption petition, which was granted the day it was filed. The appellant grandparents, parents of K.T.'s biological father, filed a motion to intervene in the probate proceedings, seeking to set aside the adoption and to get a visitation order. Their motion to intervene was granted, but the petition to set aside the adoption was denied. The trial court found that the petition for visitation should have been filed in the Domestic Relations Division of the circuit court. The grandparents appealed a denial of their petition for visitation and argued, also, that the circuit court erred in refusing to grant a hearing on visitation. On appeal, the Supreme Court declined to consider an error in denying visitation because the Court said the appellants never obtained a ruling on visitation. Their failure to obtain a ruling precludes appellate review because there is no lower-court order for the Court to review on appeal. The appellant's second

argument, that the court erred in refusing to exercise jurisdiction and to hear the issue of visitation, could not be addressed because the Court said the appellants did not develop the argument sufficiently to allow appellate review. Although they cited Amendment 80, they did not discuss the application of the amendment or make any convincing argument. The case was affirmed. (Looney, J.; No. SC 07-997; 4-24-08; Hannah)

Peterson (now Atchley) v. Dean, et al.: **[grandparent visitation]** The appellant mother appealed from an order granting visitation with her daughter, KP, to her parents, the appellees. She argued that Arkansas's grandparent visitation statute is unconstitutional and that the appellees had failed to rebut the statutory presumption that her decision to restrict visitation was in the child's best interest. The Court of Appeals affirmed the trial court finding that the constitutionality of the statute was raised, but not argued, below, and setting out the well-settled law that the appellate court will not address arguments, even those of constitutional dimension, for the first time on appeal. Secondly, the Court found that the evidence supported the trial judge's findings, including the credibility determinations he made. (McCormick, D.; No. CA 07-970; 4-30-08; Heffley)

PROBATE

Carmody and Savers, as Co-Administrators of the Estate of Helen Virginia Coan, Deceased, et al.: **[guardian–authority of; statutory construction]** As guardian of the person and the estate of the decedent during her lifetime, Linnie Betts petitioned the court on many occasions for approval of various actions in connection with the ward's property. Among her actions, she transferred stocks and securities to an account, signing a client agreement that included an arbitration clause. After her death, decedent's estate brought suit against various defendants, including the financial services company, which filed a motion to stay litigation and compel arbitration in conformity with the contract provision. The estate opposed the motion. The trial court stayed litigation and compelled arbitration. The court found that the arbitration agreements did not violate Ark. Code Ann. §§28-65-301(a)(3) and 28-65-302(a)(1)(G)(Repl. 2004). The court also found that the arbitration agreements did not violate public policy. Finally, the court found that the agreements were binding and enforceable on the petitioners asserting claims derivative of the estate. The Supreme Court affirmed. (Landers, M.; No. SC 07-909; 4-3-08; Hannah)

Taylor v. Woods, et al.: **[decedent's estates–removal of co-executor; attorneys' fees; construction of will]** The Court of Appeals affirmed in its entirety the decision of the trial court in a multiple-issue case involving the estate of a decedent who died testate, leaving birth children by a former wife, a widow, and the widow's birth children adopted by the decedent. The disputes involved the removal of a co-executor, the fees of one of three co-executors, the claim of another co-executor for legal fees for services performed for the decedent over twenty-plus years, claims for attorneys' fees, and the construction of the will. (Fogleman, J.; No. CA07-203; 4-9-08; Gladwin)

JUVENILE

Prows v. Ark. Dept. of Human Servs., **[TPR]** Court of Appeals found that the trial court made an error of law resulting in a reversal of appellant's termination of parental rights. The court held it was an error for the trial court not to consider appellant's recent improvements prior to the termination hearing. The appellate court recognized that evidence prior to termination might not outweigh other evidence demonstrating a failure to remedy the situation that caused removal, but remanded the cases and directed the trial court to consider such evidence. (Wood, R; CA07-12-19; 4-30-2008; Marshall)

EIGHTH CIRCUIT

Smith v. Intl. Paper Co.: **[employment discrimination]** Plaintiff's retaliation claim must fail as he failed to present sufficient evidence for a reasonable jury to conclude that he engaged in protected conduct when he complained to defendant's human resource managers that his supervisor was yelling and cursing at him. (W.D. Ark.; #05-3615; 4-4-08)

Stufflebeam v. Harris: **[civil rights]** Arkansas law does not permit a police officer to arrest a person for refusing to identify himself when he is not suspected of other criminal activity and his identification is not needed to protect officer safety or to resolve whatever reasonable suspicion prompted the officer to initiate an on-going traffic stop or a Terry stop. As a result, the district court erred in dismissing plaintiff's Section 1983 claim; additionally, the arresting officer was not entitled to qualified immunity as the officer acted contrary to the plain meaning of the Rule 2.2 of the Arkansas Rules of Criminal Procedure, and no reasonable officer could believe he had cause to arrest plaintiff. (W.D. Ark.; #06-4046; 4-4-08)

Fitzgerald v. Action, Incorporated: **[employment discrimination]** Plaintiff put forth sufficient evidence to show that the employer's stated reason for his charge - accumulated misconduct - was a pretext for interfering with his insurance rights in violation of ERISA, and the district court erred in granting the employer's motion for summary judgment on this claim. The district court did not err in granting the employer summary judgment on plaintiff's ADEA claim, however, as plaintiff's evidence was insufficient to create a reasonable inference that age was a determinative factor in his discharge. (W.D. Ark.; #07-2199; 4-4-08)

U.S. SUPREME COURT

Baze v. Rees: **[lethal injection]** Lethal injection is used for capital punishment by the Federal Government and 36 States, at least 30 of which (including Kentucky) use the same combination of three drugs: The first, sodium thiopental, induces unconsciousness when given in the specified amounts and thereby ensures that the prisoner does not experience any pain associated with the paralysis and cardiac arrest caused by the second and third drugs, pancuronium bromide and potassium chloride. Among other things, Kentucky's lethal injection protocol reserves to qualified personnel having at least one year's professional experience the responsibility for inserting the intravenous (IV) catheters into the prisoner, leaving it to others to mix the drugs and load them into syringes; specifies that the warden and deputy warden will remain in the execution chamber to observe the prisoner and watch for any IV problems while the execution

team administers the drugs from another room; and mandates that if, as determined by the warden and deputy, the prisoner is not unconscious within 60 seconds after the sodium thiopental's delivery, a new dose will be given at a secondary injection site before the second and third drugs are administered.

HELD: Kentucky's lethal injection protocol does not violate the Eighth Amendment's ban on "cruel and unusual punishments."

(No. 07-5439; April 16, 2008)

Virginia v. Moore: **[search/arrest vs citation]** Rather than issuing the summons required by Virginia law, police arrested respondent Moore for the misdemeanor of driving on a suspended license. A search incident to the arrest yielded crack cocaine, and Moore was tried on drug charges. The trial court declined to suppress the evidence on Fourth Amendment grounds. Moore was convicted. Ultimately, the Virginia Supreme Court reversed, reasoning that the search violated the Fourth Amendment because the arresting officers should have issued a citation under state law, and the Fourth Amendment does not permit search incident to citation.

> Held: The police did not violate the Fourth Amendment when they made an arrest that was based on probable cause but prohibited by state law, or when they performed a search incident to the arrest.

An arrest based on probable cause serves interests that justify seizure. Arrest ensures that a suspect appears to answer charges and does not continue a crime, and it safeguards evidence and enables officers to conduct an in-custody investigation. A State's choice of a more restrictive search-and-seizure policy does not render less restrictive ones unreasonable, and hence unconstitutional. While States are free to require their officers to engage in nuanced determinations of the need for arrest as a matter of their own law, the Fourth Amendment should reflect administrable bright-line rules. Incorporating state arrest rules into the Constitution would make Fourth Amendment protections as complex as the underlying state law, and variable from place to place and time to time. (No. 06-1082; April 23, 2008)