



COMMONWEALTH of VIRGINIA

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January 26, 2009

The Honorable Christopher K. Peace
Member, House of Delegates
P.O. Box 819
Mechanicsville, Virginia 23111

Dear Delegate Peace:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether a checking detail or roadblock allows a law-enforcement officer to issue a summons for failure to use a safety belt system.

Response

It is my opinion that a checking detail or roadblock alone does not permit the issuance of a summons for failure to use a safety belt system. However, it is my opinion that when the checking detail or roadblock reveals some other violation of law, an officer then may issue a summons for failure to use a safety belt system.

Background

You seek clarification regarding the circumstances under which a law-enforcement officer may issue a summons for failure to comply with § 46.2-1094(A). Specifically, you are concerned with the legal significance of law-enforcement checking details regarding the status of a seat belt violation as a “secondary” violation. You note that there is a conflict among jurisdictions; in some, the judges dismiss summonses issued solely from such stops while others permit such summonses. You seek guidance regarding whether a checking detail constitutes the “primary offense” that would permit issuance of a summons for failure to use a safety belt system pursuant to § 46.2-1094(F).

Applicable Law and Discussion

Section 46.2-1094 requires passengers in the front seat of a motor vehicle to use safety belt systems,¹ establishes a fine for failure to comply, and authorizes officers to issue a uniform traffic summons for violations. Section 46.2-1094(F) provides that:

¹The statute provides exemptions for certain classes of drivers and passengers that are not pertinent to your inquiry. *See* VA. CODE ANN. § 46.2-1094(B) (Supp. 2008).

No citation for a violation of this section shall be issued *unless* the officer issuing such citation has cause to stop or arrest the driver of such motor vehicle *for the violation of some other provision of this Code or local ordinance* relating to the operation, ownership, or maintenance of a motor vehicle or any criminal statute. [Emphasis added.]

Since § 46.2-1094(F) plainly limits the circumstances under which officers may issue citations for failure to use a safety belt system, the issue you present is a question of statutory construction.

When the language of a statute is unambiguous, that language is binding, and a construction is not permitted that amounts to concluding that the General Assembly did not mean what it actually has stated.² Moreover, penal statutes are strictly construed against the Commonwealth and in favor of the liberty of citizens.³ “Additionally, ‘every part of a statute is presumed to have some effect and no part will be considered meaningless unless absolutely necessary.’”⁴

Section 46.2-1094(F) plainly contemplates that summonses ordinarily will not be issued solely for a violation of § 46.2-1094(A). It is my opinion that to overcome the express limitation set forth therein, a law-enforcement officer must suspect the motorist has committed, is committing, or will commit some other offense. The express language of § 46.2-1094(F) permits a law-enforcement officer to issue a summons for failure to use a safety belt system only when the officer “has cause to stop or arrest” a motorist *for* some other violation of the *Code* or a local ordinance.⁵ In other words, § 46.2-1094 looks to the officer’s basis for detaining a motorist, not to the fact of detention itself. Checking details or roadblocks do not meet the statutory prerequisite established in § 46.2-1094(F) because the basis for such a stop is not a violation or suspected violation.

Law-enforcement checking details or roadblocks are constitutionally permissible under certain conditions,⁶ which provide that checking details must be governed by “a plan embodying explicit, neutral limitations on the conduct of individual officers.” This is true unless the officer suspects the individual subject to the stop of criminal activity.⁷ It is the application of *neutral* criteria for stopping vehicles that legitimizes the checking detail.⁸ Thus, while such stops do not violate the Fourth Amendment, they likewise do not flow from any “cause” to believe specific criminal activity, traffic infractions, or other violations are occurring. Therefore, it follows that checking details are not the necessary “cause” to stop or arrest a motorist within the contemplation of § 46.2-1094(F).

However, once a motorist has been stopped at a checking detail or a roadblock, should the law-enforcement officer determine that a violation of the *Code* or a local ordinance exists, the officer then has such “cause” to stop or arrest the motorist for that violation. Under those circumstances, the officer also may issue a summons for failure to use a safety belt system.

²Williams v. Commonwealth, 265 Va. 268, 271, 576 S.E.2d 468, 470 (2003).

³Berry v. Chesapeake, 209 Va. 525, 526, 165 S.E.2d 291, 292 (1969).

⁴Robinson v. Commonwealth, 274 Va. 45, 51-52, 645 S.E.2d 470, 473 (2007) (quoting Hubbard v. Henrico Ltd. P’ship, 255 Va. 335, 340, 497 S.E.2d 335, 338 (1998)).

⁵See § 46.2-1094(F).

⁶See generally Brown v. Texas, 443 U.S. 47 (1979); Delaware v. Prouse, 440 U.S. 648 (1979).

⁷Brown, 443 U.S. at 51, *quoted in* Lowe v. Commonwealth, 230 Va. 346, 350, 337 S.E.2d 273, 276 (1985).

⁸See Lowe, 230 Va. at 350, 337 S.E.2d at 276.

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Conclusion

Accordingly, it is my opinion that a checking detail or roadblock alone does not permit the issuance of a summons for failure to use a safety belt system. However, it is my opinion that when the checking detail or roadblock reveals some other violation of law, an officer then may issue a summons for failure to use a safety belt system.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, reading "Robert F. McDonnell". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Robert F. McDonnell