The Liberty Conservative

Five Reasons Libertarians Can Support Judge Roy Moore

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I worked as Roy Moore's staff attorney for over three years and know him well. Depicted as a right-wing loon, he's actually a pensive man who authored thoughtful opinions as chief justice of the Alabama Supreme Court.

Five opinions written by Moore stand out as reasons libertarians could support him in the Alabama primary to fill the U.S. Senate seat once held by Jeff Sessions. Like most of his opinions, these received little fanfare or notice.

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I.

***Ex parte Brooker*, 192 So. 3d 1 (Ala. 2015)**

Lee Carroll Brooker, now a 78-year-old inmate at Holman Prison, petitioned the Alabama Supreme Court for a writ of certiorari, challenging his sentence to life imprisonment without the possibility for parole for a non-violent crime involving marijuana. The Court denied his petition. Moore dissented, calling the sentence "excessive and unjustified."

Moore was troubled by testimony regarding the search of Brooker's residence, where investigators found marijuana plants. One of the investigators testified that Brooker's son, not Brooker, consented to the search of Brooker's home. Brooker was not physically present when his son allegedly consented. Brooker testified that, when officers showed up at his house, he asked to see a search warrant, which they did not have. "I'm not consenting to a search," he claims to have told them.

Moore would have granted Brooker's petition. "I urge the legislature," he wrote in his dissent, "to revisit that statutory sentencing scheme [under which Brooker was sentenced] to determine whether it serves an appropriate purpose."

II.

***Ex parte W.F.*, 214 So. 3D 1153 (Ala. 2015)**

Three juveniles, one of whom was a gun enthusiast, set out one evening for a hunting cabin with an AR-15 rifle in their vehicle. A relative of one of the boys owned the cabin. Having driven for about 15 to 20 minutes, at approximately 7:00 p.m., they stopped at a stop sign at an intersection in a rural area known for hunting. Another vehicle, they claim, stopped at the intersection at the same time. They let that vehicle pass, they say, before continuing on their way.

A man later contradicted the boys account, stating he heard gunshots coming from the boys' vehicle while it was parked at the intersection. The man, who had a law-enforcement background, jumped in his vehicle and followed the boys to the cabin.

Accounts differ as to what happened next. The man maintains he asked the boys what they were shooting at and they claimed they set off firecrackers. The boys say the man was yelling at them and accusing them of shooting a gun, which they insist was untrue. They claim they never fired a gun at all that night, let alone at the intersection. They also say the man falsely accused them of shooting at both the stop sign and a deer.

The boys locked the gate to the cabin so the man couldn't follow them. Meanwhile, the man called the sheriff. The boys

attempted to leave the cabin, but the man blocked the gate so they couldn't leave. Eventually, two deputies arrived at the cabin. The boys allowed them to search the truck and acknowledged there was a firearm in it. The deputies found the gun unloaded, with no magazine inserted. The man told the deputies to run a check on the gun's serial number and even helped the deputies locate that number. The gun check turned up nothing. No shell casings were found in the car. Everyone went their separate ways.

The next morning, the man returned to the intersection to look for shell casings, but couldn't find any. He nevertheless signed out arrest warrants for the boys for hunting after dark, from a public road, with the aid of an automobile—three crimes rolled into one alleged act.

The case went to a bench trial. The boys moved for an acquittal on the ground that the State failed to prove guilt beyond a reasonable doubt. The judge denied their motion and found them guilty. They appealed to the Alabama Court of Criminal Appeals, which affirmed the trial court. At Moore's behest, the Alabama Supreme Court granted the boys' certiorari petition.

In his opinion, Moore challenged the operative rule that mere possession of a gun and a light in an area known for hunting is sufficient to sustain a conviction for the crime of night hunting. He disagreed that the prosecution, to establish guilt, need not show that shots were fired from the gun. He wrote that the facts in this case did not establish the necessary elements to convict the boys for attempting to hunt at night. "[B]ecause the State has failed to present substantial evidence that the petitioners are guilty of the charged hunting offenses," he opined, "all of the petitioners' convictions must be vacated."

III.

***Ex parte Bennett*, 164 So. 3d 1162 (Ala. 2014)**

In 2011, Michael Dale Bennett was riding in a vehicle driven by someone with an outstanding warrant for arrest. Two officers searched the driver's car and found $19,855 in cash belonging to Bennett, not the driver. The officers seized the cash and arrested the driver and Bennett, who was later released.

Local law-enforcement officials transferred Bennett's cash to the federal government under the doctrine of adoptive forfeiture (a form of civil asset forfeiture) whereby state officers confiscate assets related to a criminal arrest or investigation and then turn them over to federal authorities.

Alabama's statute detailing which property, materials, or objects are subject to forfeiture is § 20-2-93, Ala. Code 1975, a provision of which requires the "prompt" institution of forfeiture proceedings. Bennett sued the two officers who seized his cash, alleging they had not promptly filed a forfeiture action and seeking the return of his money. The trial court ruled for Bennett. The officers appealed to the Alabama Court of Civil Appeals, not the Alabama Court of Criminal Appeals, because the action involved property rights, not the arrest. The Alabama Court of Civil Appeals ruled for the officers, reversing the trial court's decision and remanding the case to the trial judge with instructions.

Bennett petitioned the Alabama Supreme Court for a writ of certiorari, arguing that the Alabama Supreme Court had never addressed whether § 20-2-93 authorized local law enforcement to transfer seized property to federal authorities. Bennett claimed that Alabama forfeiture laws were stricter than their federal counterparts and that, therefore, state officers were incentivized to transfer seized assets to federal authorities.

The Alabama Supreme Court denied Bennett's petition for a writ of certiorari. Moore was the only dissenting justice. Believing Bennett's arguments had a probability of merit, he would have granted the writ.

"On its face, § 20-2-93(d) does not authorize state or local law-enforcement officials to transfer, or forbid them from transferring, seized property to federal law-enforcement officials," he wrote. "The only portion of the statute that arguably could authorize such a transfer is § 20-2-93(d)(3), which allows state or local law-enforcement officials to 'take custody of the property and remove it to an appropriate location for disposition in accordance with law.'"

Moore was concerned that local officers

were using federal law, under which law enforcement enjoyed wider latitude to institute forfeiture, to accomplish that which could not be accomplished under state law. This, he thought, was wrong.

IV.

***Ex parte Conner*, 165 So. 3d 556 (Ala. 2014)**

A cashier at Lowe's told his store's loss-prevention manager that he thought he had seen a man shoplifting. He later informed the manager that the alleged shoplifter, later identified as Willie Conner, was back in the store. The manager examined video-surveillance footage showing Conner stuffing a nail gun in his pants and leaving the store.

Two loss-prevention managers confronted Conner in the parking lot and escorted him back into the store, at which point Conner told them he had a gun. The loss-prevention managers wrestled Conner to the ground and found a folding knife (or a pocketknife) in his pocket. Until they searched him, the managers had no reason to know Conner possessed the knife.

Conner turned over the nail gun to the managers. He informed responding officers that, when he told the managers he had a gun, he was referring to the nail gun.

In Alabama, under § 13A-8-41, Ala. Code 1975, a person may be convicted of the crime of robbery in the first degree for committing a theft by using force or the threat of force while armed with a deadly weapon or dangerous instrument. Having been charged on first-degree robbery and two lesser-included offenses, a jury found Conner guilty of robbery in the first degree. The trial court sentenced Conner as a habitual felony offender to life imprisonment.

Conner appealed. The Alabama Court of Criminal Appeals affirmed, reasoning that Conner could have been convicted of robbery in the first degree even if he was not actually armed with a deadly weapon. Under § 13A-8-41(a)(1), however, an unarmed defendant cannot be convicted of first degree robbery unless he causes serious physical injury to another. Therefore, the Alabama Court of Criminal Appeals erroneously stated the governing rule.

Conner petitioned the Alabama Supreme Court for a writ of certiorari. Six justices concurred to deny the petition while the other three, including Moore, dissented. "If we were to overturn Conner's conviction for first-degree robbery, a Class A felony," Moore explained, "and remand for resentencing on the lesser-included offense of third-degree robbery, a Class C felony, Conner's minimum sentence under the habitual-felony-offender statute would be 15 years as opposed to life imprisonment."

Moore concluded his dissent by saying, "Surely a mandatory minimum sentence of life imprisonment is a manifest injustice when, under a correct reading of the robbery statutes, the minimum available sentence is 15 years."

V.

***Ex parte Newman*, 143 So. 3d 746 (Ala. 2013)**

Cornelius Newman left a Waffle House in Dothan, Alabama, without paying his $8 bill. He brandished a shotgun when employees confronted him in the parking lot. He was arrested, convicted of the Class A felony of first-degree robbery, and sentenced to 35 years in prison. On appeal, he argued he should not have been convicted of first-degree robbery because his offense was theft of services, also known as a "dine-and-dash," which is a misdemeanor. The Alabama Court of Criminal Appeals rejected this argument, affirming the conviction.

The Alabama Supreme Court granted a writ of certiorari to review the judgment of the Alabama Court of Criminal Appeals. Six justices, having reviewed records from the courts below, voted to quash the writ. Moore dissented.

His dissent highlighted § 13A-8-10, Ala. Code 175, which provides, among other things, that absconding from a restaurant without paying constitutes the crime of theft of services. Because this statute contemplates precisely the acts for which Newman was arrested, Moore wrote that Newman's sentence was "a serious miscarriage of justice."

"I would reverse the conviction imposed in the trial court," Moore stated, "because under Alabama law Newman did not

commit first-degree robbery. Thus, his punishment far exceeds a sentence for theft of services and menacing and reckless endangerment, charges which would be applicable under the facts of this case."

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My good friend Ryan McMaken recently wondered if Moore is "a pro-Drug War fanatic." I can assure him Moore is not. Moore complained when individuals were sentenced to life imprisonment without the possibility of parole for non-violent drug crimes. In *Gill v. State*, 157 So. 3d 881 (Ala. 2014), he criticized an "unjust sentencing scheme that mandated the imprisonment of many nonviolent convicted offenders for life with no opportunity for parole." In *Ex parte Rios*, 188 So. 3d 646 (Ala. 2015), he stated, "I believe a mandatory sentence of life imprisonment without the possibility of parole for a nonviolent, drug-related crime may be excessive and unjustified."

Nor is Moore a "run-of-the-mill Republican." His loyalty is to principles, not party. His candidacy has already disrupted political convention. As a Senator, he'll seek to disempower the federal government while upsetting the culture of pretended outrage and unprincipled conformity that characterizes the Senate.

A vote for Moore is a vote against federal power. Libertarians should support him.

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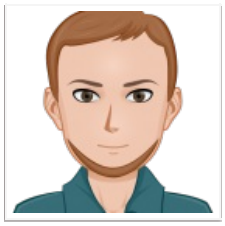

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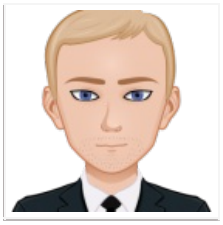

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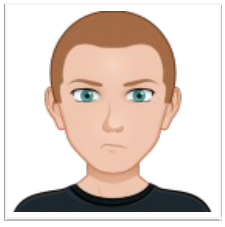

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