VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE COUNTY OF ...

Commonwealth of Virginia	
v.	Nº. GC ...-00
..., Defendant	*Criminal Division*

MEMORANDUM: MEANING OF THE WORD, "SECURED"

COMES NOW THE DEFENDANT, ..., and offers this memorandum of points and authorities with regard to the proper interpretation and use of the term, "secured", as used in Virginia Code § 18.2-308:

A general survey of the Code of Virginia and the opinions of the appellate courts of Virginia indicates that the word, "secured", means three different things depending on the context; e.g., "debt secured by a deed of trust" (i.e., to vouchsafe as by the imposition of a lien upon property); "the first amendment secures to the citizenry the right of free speech" (i.e., to obtain or preserve an abstract quality); and "any child, up to age eight, ...is...properly secured in a child safety seat" (i.e., restrained such as to prevent unwanted movement). There are two figurative or analogical uses, and one physical use, but nowhere in Virginia jurisprudence is the word used as a synonym for "locked".

In the physical sense, the word is used uniformly by both the Code and judicial opinions to mean "restrained". There is no question that the term may be used in

the specific context in which the use of a locking device is the method of restraint, but "secured" is a much more general term than "locked" and includes that concept as well as others.

The following excerpts are examples of the use of the term, "to secure", in the context of a physical act of restraint.

Virginia Code § 18.2-308:

B. This section shall not apply to any person while in his own place of abode or the curtilage thereof.

Except as provided in subsection J1, this section shall not apply to:

...

10. Any person who may lawfully possess a firearm and is carrying a handgun while in a personal, private motor vehicle or vessel and such handgun is secured in a container or compartment in the vehicle or vessel.

...

Virginia Code § 46.2-1095:

§ 46.2-1095. Child restraint devices required when transporting certain children; safety belts for passengers less than eighteen years old required; penalty. —

A. Any person who drives on the highways of Virginia any motor vehicle manufactured after January 1, 1968, shall ensure that any child, up to age eight, whom he transports therein is provided with and properly secured in a child restraint device of a type which meets the standards adopted by the United States Department of Transportation. Further, rear-facing child restraint devices shall be placed in the back seat of a vehicle. In the event the vehicle does not have a back seat, the child restraint device may be placed in the front passenger seat only if the vehicle is either not equipped with a passenger side airbag or the passenger side airbag has been deactivated.

B. Any person transporting another person less than 18 years old, except for those required pursuant to subsection A to be secured in a child restraint device, shall ensure that such person is provided with and properly secured by an appropriate safety belt system when driving on the highways of Virginia in any motor vehicle manufactured after January 1, 1968, equipped or required by the

provisions of this title to be equipped with a safety belt system, consisting of lap belts, shoulder harnesses, combinations thereof or similar devices.

...

***Graham v. Cook*, 278 Va. 233, 237, 682 S.E.2d 535 (2009):**

Dr. Cook ordered x-rays of Graham's hip and diagnosed Graham as having a fracture of the left hip socket. In August 2004, Dr. Cook surgically repaired the fracture by installing a reconstruction plate secured by several screws.

***McGuire v. Hodges*, 273 Va. 199, 208-209, 639 S.E.2d 284 (2007):**

The standard of review directs that we consider whether the circumstantial evidence was sufficient for the jury to conclude that Cody's death was probably, rather than merely possibly, the result of Mrs. Hodges' negligence regarding the pool gate. As noted above, evidence heard by the jury permitted it to conclude that Mrs. Hodges had installed a defective gate which offered a young child access to the swimming pool because the latch was not above his reach. Testimony at trial described an unlocked gate, secured only by a chain, which the young boy was attempting to open shortly before he was discovered floating in the pool. The evidence was in question between Mrs. Hodges' testimony that she left the pool gate firmly secured the day before the accident and the niece's testimony that Mrs. Hodges reentered the pool area on September 17th without describing the status of the chain on the gate. While McGuire admitted to seeing the chain on the gate, she did not know whether the gate was secured.

***Allstate Insurance Co. v. Gauthier*, 273 Va. 416, 417-418, 641 S.E.2d 101 (2007):**

In the process of replacing the water pump, Mr. Gauthier disconnected the hose that ran from the thru hull fitting to the pump's suction. Instead of closing off the seacock [valve], Mr. Gauthier put a plug made from a handle of a rake in the hose and secured the loose end in a position above the water line to prevent water from flowing through the tube and secured it by pushing it behind a bar on the engine.

***Holsapple v. Commonwealth*, 266 Va. 593, 598, 587 S.E.2d 561 (2003):**

After the inspection, the house was declared not habitable. Some of the foundation joints had no mortar in them, the sill plate was not attached to the foundation, no hangers had been installed to hold the floor joists in place, the roof trusses were not properly secured or tied together, the roof sheathing was not properly nailed to the trusses, and the shingles were not properly nailed to the roof.

***Tashman v. Gibbs*, 263 Va. 65, 68, 556 S.E.2d 772 (2002):**

In August 1996, Dr. Tashman examined Gibbs and advised her that she needed a total hysterectomy and a sacrospinous ligament suspension procedure (sacrospinous procedure) to correct the prolapse. In a sacrospinous procedure, the prolapsed vagina is pulled back into position and secured with sutures fixed to the sacrospinous ligament.

***Stout v. Bartholomew*, 261 Va. 547, 555-556, 544 S.E.2d 653 (2001):**

[4] As previously stated, Arlington County Code § 2-6 requires that dogs "be kept secured by a leash or lead, and under the control of the owner . . . or within the real property limits of its owners." This ordinance cannot, however, be read in isolation. It must be construed in conjunction with other ordinances having the same purpose. See *Prillaman v. Commonwealth*, 199 Va. 401, 405, 100 S.E.2d 4, 7 (1957) ("statutes are not to be considered as isolated fragments of law, but as a whole, or as parts of . . . a single and complete statutory arrangement").

In addition to § 2-6, the Arlington County Code contains other relevant sections dealing with animals. For instance, Arlington County Code § 2-5 provides that "[i]t shall be unlawful for the owner of any dog to permit such dog . . . to run at large in the county . . . ." The term "[r]unning at large" is defined as "any dog, while roaming, running or self-hunting off the property of its owner or custodian and not under its owner's or custodian's immediate control." Arlington County Code § 2-4.

[5] When considering these ordinances "as parts of . . . a single and complete statutory arrangement," *Prillaman,* 199 Va. at 405, 100 S.E.2d at 7, we conclude, as Bartholomew argues, that § 2-6 does not apply in this case. Bartholomew had in place a system designed to keep Jackson within the Bartholomews' real property limits. Bartholomew did not take Jackson off his property without a leash. The exceptions to the requirements of § 2-6, i.e., for "off-lead training, obedience matches and trials, [and] when the dog has a skin condition which would be exacerbated by the wearing of a collar," confirm that § 2-6 applies when an owner chooses to take a dog off the owner's real property limits. When a dog escapes from a pet containment system designed to keep the dog within the owner's real property limits, the owner has not violated § 2-6. Thus, the circuit court was

correct in refusing to give Stout's Instruction No. 31 because Arlington County Code § 2-6 does not supply a standard of care applicable to this case.

Garrett v. I. R. Witzer Co., 258 Va. 264, 267, 518 S.E.2d 635 (1999):

Garrett testified that the pin, which was in the cylinder when the accident occurred, was the same pin that he saw in the trailer's hydraulic cylinder within a few days of his employment in March 1991. Garrett testified that the pin was secured on one end by a bolt and two nuts and on the other end by a washer that had been welded to the pin. The pin was chamfered on one end.

Bridgestone/Firestone v. Prince William Square, 250 Va. 402, 404, 463 S.E.2d 661 (1995):

In accordance with the architect's specifications, Cole installed a layer of perlite board over the roof's corrugated metal deck and then placed expanded polystyrene (EPS) insulation over the perlite board. In further accordance with the architect's specifications, Cole secured the insulation with metal fasteners.

Mann v. Hinton, 249 Va. 555, 560, 457 S.E.2d 22 (1995):

Hinton testified that on the day in question, he was assisting in Precision's move to a new shop by transporting some of the company's office equipment. Hinton had secured the equipment, including "[f]ile cabinets" and "office supplies," on the back of the flatbed truck. After driving away the loaded truck, he stopped for a traffic light on Campostella Road.

Norfolk and Western Railway Co. v. Hodges, 248 Va. 254, 259, 448 S.E.2d 592 (1994):

As plaintiff prepared to work in the overturned case, he observed the position of the standing doors and "didn't look around" to determine whether the person who opened them "had tied them off or not." Testimony indicated that doors standing at a 90-degree angle could be secured by wedging a piece of wood into the door mechanism or by wiring the door open.

***Holcombe v. NationsBanc*, 248 Va. 445, 445, 450 S.E.2d 158 (1994):**

> **The defendant had stored two heavy partitions in that room for several months. The partitions were leaning against the wall and were not secured. While engaged in cleaning the bathroom, the plaintiff was injured when the partitions toppled over and struck her on the shoulder.**

***Chabrol v. Commonwealth*, 245 Va. 327, 330, 427 S.E.2d 374 (1993):**

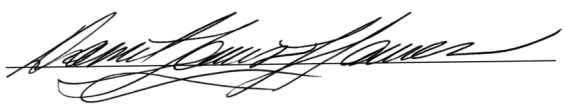
> **Prior to the abduction, Chabrol had placed restraining devices in the bedroom. He had secured one looped section of clothesline to each lower corner of the bed. After Chabrol placed these loops over Harrington's ankles, her feet could come no closer than four inches apart. Chabrol also had secured clothesline to both posts at the head of the bed. When he placed Harrington's hands through the loops that he had fashioned there, her hands were bound together above her head.**

***Rogers v. Commonwealth*, 242 Va. 307, 312, 410 S.E.2d 621 (1991):**

> **The victim was alive, lying against a buffet in the dining room near the door to the kitchen. The knife "was bent up so it was imbedded in her back . . . above her bra strap." One of the paramedics cut bandages "and secured the knife in place where it was at." The victim was semi-conscious and was able to talk but she "wasn't saying anything relevant." She was lying on her stomach in a pool of blood which apparently was coming from head wounds.**

Defendant notes, finally, that there appear to be no incidence of the use of the word, "to secure", to mean "locked" anywhere in the Code or in any judicial opinion in Virginia. That word, as used in Va. Code § 18.2-308 cannot possibly be construed to require that a firearm be secured specifically by a locking device.

Respectfully Submitted,
...,
Defendant, by counsel



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Certificate of Service: I certify, that this day of July 6, 2011, I did cause a true and correct copy of the foregoing to be hand-delivered to the offices of opposing counsel of record for each party, and to all *pro-se* parties who have entered their appearances, pursuant to the provisions of Va. Code §§ 8.01-314, 16.1-89, 16.1-265; Va. Sup. Ct. Rules 1:12, 1:17, 3A:21, 4:8, 4:15, 7A:10, 8:8, 8:13; and/or Fed. R. Civ. P. 5(d), as appropriate. (Va. Sup. Ct. Rules, Form 1.)

Office of the Attorney for the Commonwealth,
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