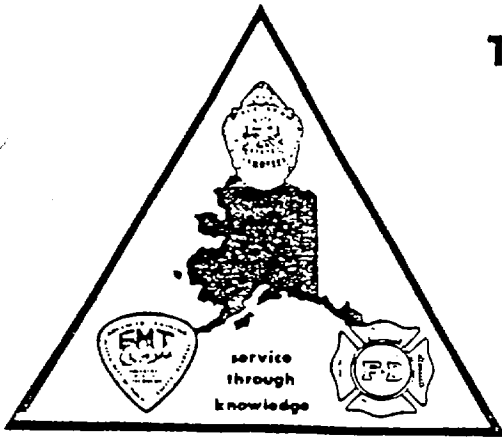


DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY

LEGAL BULLETIN NO. 86
August 3, 1984



GOOD FAITH EXCEPTION TO EXCLUSIONARY RULE IN SERVICE OF SEARCH WARRANT

References: United States
v.
Alberto Antonio LEON

United States Supreme Court
~~35 CrL 3273~~ 486 US
July 5, 1984

Massachusetts
v.
Osborne SHEPPARD

United States Supreme Court
~~35 CrL 3296~~ 486 US
July 5, 1984

FACTS:

Both of these cases involve the service of search warrants issued by a detached and neutral magistrate. Police officers served the warrants believing them to be proper. On later review, higher courts found the warrants to be invalid and suppressed evidence seized. The government appealed to the United States Supreme Court.

In the LEON case, officers were working on a drug case and one of the officer prepared an affidavit summarizing the investigation and included information supplied by a confidential informant. The affidavit was checked by supervisors and members of the District Attorney's office; all agreed it contained ample probable cause to search specified locations. A magistrate issued the warrants and a quantity of drugs was seized. A higher court ruled that the affidavit did not contain sufficient probable cause and ordered the seized evidence suppressed. The government appealed.

In the SHEPPARD case, officers sought a warrant to search the residence of a murder suspect. This took place on a Sunday when the courts were not open. A police officer found a warrant form normally used in another district to search for controlled substances. After making some changes in the form, the officer prepared the affidavit establishing probable cause to search for evidence connected to the murder. The warrant and affidavit were checked by members of the District Attorney's office and approved. The officer contacted a magistrate at his residence and informed him that the warrant form might need further changing. The issuing magistrate made some corrections, but did not change the portion which authorized a search for controlled substances. He placed the proper jurisdiction on the warrant and told the officer that it was now sufficient. The officer served the warrant and seized evidence of the homicide. A reviewing court found that the issuing magistrate had committed a technical error by issuing the warrant when the term "controlled substances" was still on the document. The court ordered suppression of all the evidence seized. The government appealed.

ISSUE:

Should the exclusionary rule be applied to bar use of evidence obtained by officers acting in reasonable reliance on a search warrant, which is issued by a detached and neutral magistrate and ultimately found to be invalid?

HELD: No.

REASONING:

1. In an ordinary case, an officer cannot be expected to question the magistrate's probable-cause determination nor his judgement that the form of the warrant is technically sufficient.

2. Suppression remains an appropriate remedy if the magistrate or judge were misled by affidavit information which was known to be false or if the magistrate wholly abandoned his detached and neutral judicial role.

3. Suppressing evidence will not serve the deterrent function that the exclusionary rule was designed to achieve just because a judge failed to make necessary clerical corrections even though he assured those changes would be made.

NOTES:

The exclusionary rule was designed to deter misconduct on the part of the police. Years ago, the police would make warrantless seizures and unlawful entries onto private premises using all evidence gathered against the defendant. The defendant could bring trespass cases or civil actions against the offending officer, but the officer usually prevailed because of the nature of his mission. The court, in these cases, is no longer going to hold the officer responsible for the mistake of the judge as long as the officer does not intentionally mislead the judge.

In both of these cases, the officers were able to articulate their actions before contacting the magistrate, including having the District Attorney's office review the warrant and affidavit.

The Alaska police officer will have to be extremely careful in the "bush" areas where the magistrates do not have the legal expertise judges in the urban areas do. Often times, the police officer will have more training than the magistrate, so it is incumbent on the officer to keep the issuing magistrate out of trouble by making sure you have established ample probable cause on the affidavit as well as a technically correct warrant.

Justice Blackmun emphasized that the majority's ruling should be reconsidered if it results in a change in police compliance (taking advantages of judges, etc.) with the Fourth Amendment. This is sort of putting the police on probation--let's be extremely careful not to blow it!