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# DPS TRAINING BULLETIN

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LEGAL BULLETIN NO. 109  
March 21, 1987

PARTICULARLY DESCRIBING THE PLACE  
TO BE SEARCHED AND THE PERSONS  
OR THINGS TO BE SEIZED

Reference: Maryland  
v.  
Harold Garrison

U. S. Supreme Court  
55 USLW 4190 (No. 85-759)  
February 24, 1987

FACTS:

Baltimore police had a valid warrant to search the person and third floor apartment of Lawrence McWebb. The police reasonably believed that there was only one apartment on the third floor described in the warrant.

When the police executed the warrant, they encountered McWebb in front of the building and used his key to gain admittance to the first floor hallway and to the locked door at the top of the stairs on the third floor. As they entered the vestibule of the third floor, they encountered Garrison standing in the hallway. Police could see into the interior of both McWebb's apartment to the left and Garrison's to the right because the doors to both were open. Only after Garrison's apartment had been entered and heroin, cash and drug paraphernalia had been found did any of the officers realize that there were two apartments on the third floor. The search was discontinued as soon as they became aware of that fact.

Over the objection of Garrison, evidence seized was used against him at trial. The Maryland Supreme Court reversed, ruling the evidence inadmissible under the Fourth Amendment and the State of Maryland appealed to the United States Supreme Court.

ISSUE:

Was the officers' conduct consistent with a reasonable effort to ascertain and identify the place intended to be searched within the meaning of the Fourth Amendment?

HELD: Yes.

REASONING:

1. On the basis of information officers disclosed, or had a duty to discover and disclose, to the issuing magistrate, the warrant, insofar as it authorized a search that turned out to be ambiguous in scope, was valid when it issued. (emphasis added)

2. Objective facts available to the officers at the time suggested no distinction between McWebb's apartment and the third-floor premises.
3. The officers' entry into the third-floor common area was legal; they carried a warrant to search those premises.
4. If the officers had known, or should have known, that the third floor contained two apartments before they entered the living quarters on the third floor, and thus had been aware of the error in the warrant, they would have been obligated to limit their search to McWebb's apartment.
5. While the purposes justifying a police search strictly limit the permissible extent of the search, the court has also recognized to allow some latitude for honest mistakes made by officers in the dangerous and difficult process of making arrests and executing search warrants. (emphasis added)

NOTES:

This case was decided on the United States Supreme Court's interpretation of the Fourth Amendment. Remember--Alaska is not bound by this ruling and could come to an opposite conclusion based on Alaska's Constitution.

The United States Supreme Court, in this case as in other recent opinions, is attempting to establish guidelines for the field officer. The Court also recognized "good faith" or that "honest mistakes" can be made by police in performance of their duties. If mistakes are not blatant, the United States Supreme Court has ruled that evidence should not be excluded merely to deter police misconduct.

Review of the following cases is recommended:

Johnson v. State, Legal Bulletin No. 40--describing the premises to be searched.

U. S. v. Leon and Massachusetts v. Shepard, Legal Bulletin No. 86--"good faith" exception to exclusionary rule.

Rhode Island v. Briggs, Legal Bulletin No. 101--police officer can be personally sued if he knowingly violates a person's constitutional rights.

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Add this case to Section Q, page 12, of your "Contents" and to Q-2 of "Text". File Legal Bulletin No. 109 numerically under Section R of the manual.