



# DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 101  
May 1, 1986

POSSIBLE CIVIL LIABILITY  
FOR OFFICERS WHO OBTAIN A WARRANT  
LACKING PROBABLE CAUSE

Reference: Edward Malley & Rhode Island  
v.  
James R. & Louisa Briggs

U. S. Supreme Court  
~~No. 84-1586~~ 475 US  
~~38 CIL 3169~~  
March 5, 1986

FACTS:

Malley, a Rhode Island state trooper, was conducting a court-authorized wiretap on the telephone of Paul Driscoll, an acquaintance of Briggs' daughter. Driscoll received a call from an individual, not known to the troopers, who identified himself as "Dr. Shogun". Shogun talked about a party that occurred the preceding night and said, "I can't believe I was token in front of Jimmy Briggs--he passed it to Louisa--Paul says Nancy was sitting in his lap rolling her thing." Another call monitored the same day showed the party discussed by Driscoll and "Dr. Shogun" took place at the Briggs' house. On the basis of these two calls, Trooper Malley drew up felony complaints, charging that the Briggs' and Driscoll had marijuana in their possession.

Approximately two months later, Trooper Malley presented the complaints, along with eighteen others, to a District Court judge who signed arrest warrants. About one month later, the Briggs couple were arrested at their home at 6:00 a.m. They were taken to the police station, booked, held for several hours, arraigned and released. Local and statewide newspapers published the fact that the Briggs couple, prominent members of their community, had been arrested and charged with drug possession. The charges against the Briggs' were subsequently dropped when the Grand Jury did not return an indictment.

The Briggs' filed a federal civil case against Trooper Malley under 42 U.S.C. 1983, alleging civil rights violations. The Briggs' sued the trooper individually and personally for knowingly violating their Fourth (illegal seizures) and Fourteenth (due process) Amendment rights.

ISSUE:

Can an officer be held for civil liability if he fails to establish probable cause on the supporting complaint and affidavit when seeking the issuance of a warrant?

HELD: Yes.

REASONING:

1. A reasonably well-trained officer would have known that his affidavit failed to establish probable cause and that he should not have applied for the warrant.

2. An officer who seeks an arrest warrant by submitting a complaint and supporting affidavit to a judge is not entitled to immunity, unless the officer has an objectively reasonable basis for believing that the facts alleged in his affidavit are sufficient to establish probable cause.

3. True, an officer who knows that objectively unreasonable decisions will be actionable (can be sued) may be motivated to reflect, before submitting a request for a warrant, whether he has a reasonable basis for believing that his affidavit establishes probable cause. But such a reflection is desirable, because it reduces the likelihood that the officer's request for a warrant will be premature.

4. It is reasonable to require the officer applying for a warrant to exercise professional judgment. A magistrate, working under docket pressure, may fail to do the proper review for probable cause as magistrates should.

5. In Leon, it was stated that "good faith" is confined to the objectively ascertainable question whether a reasonably well-trained officer would have known that the search was illegal despite the magistrate's authorization.

NOTES:

The court believes the exclusionary rule serves a purpose, but also believes that imposing a direct cost to an officer who knowingly violates a person's constitutional rights is a remedy benefiting the victim of police misconduct.

In this case, the officer drafted the warrant without assistance or counsel from the District Attorney. The officer did not corroborate any of the information he had received via the wiretap and the warrant's for the Briggs' were presented with eighteen other warrants.

Remember--the same rule applies in the case of search warrants.

You should always seek the assistance of the District Attorney in preparing your affidavits.

Review of the following cases is recommended:

United States v. Leon/Massachusetts v. Sheppard, Legal Bulletin No. 86--  
discusses the "good faith" exception to the exclusionary rule.