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On the trail of the well-marked Mapp:
"Good Faith" and the Exclusionary Rule
after U.S. v. Leon and Mass. v. Sheppard

Every law enforcement officer knows that even though all efforts may have been made to execute a search warrant in a legal fashion that sometimes the evidence seized is excluded from trial because of problems created by that legal demon known as the "Exclusionary Rule." The rule is not a complicated one and has been with us, for good, since the U.S. Supreme Court confirmed its validity in the case of Mapp v. Ohio, 367 U.S. 643 (1961). The Exclusionary Rule, simply stated, says that evidence which is the result of a prior unlawful search or seizure may not be used as a part of the prosecution's case. The reason behind such a rule is to deter or prevent unlawful police conduct when conducting searches.

On July 5, 1984 the Supreme Court issued its opinions in the cases of U.S. v. Leon (35 CrL 3273) and Massachusetts v. Sheppard (35 CrL 3296) and in doing so announced a limited "Good Faith" exception to the Exclusionary Rule.

The facts in the cases may be stated briefly as follows:

In Leon, officers of the Burbank California Police Department conducted extensive surveillance of the defendant's drug-related activities. After much observation the officers prepared an affidavit for a search warrant for Leon's residence and automobile. The affidavit was the basis for an application for a search warrant. The application was reviewed by members of the District Attorney's and found to be legally sufficient. After presentation be-

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fore a state court judge, a search warrant, valid on its face, was issued. Later the affidavit portion of the warrant was found to be defective and the warrant was declared invalid in spite of the fact that the issuing judge had found it to be sufficient. As a result, drugs found in Leon's automobile and residence were not permitted to be introduced at trial, even though, as the State argued, the officers involved had acted totally "in good faith" believing the warrant to be valid. The Court of Appeals affirmed.

In Sheppard Boston police, investigating a homicide, prepared an affidavit for use in obtaining a search warrant for evidence of the homicide at the defendant's house. Unable to obtain a proper warrant application form for the type evidence being sought, a detective involved in the case took a warrant form used in another police district for illegal drugs and attempted to "doctor" it to meet the purposes of the search. A member of the District Attorney's Office reviewed the affidavit, pronounced it legally sufficient and the police then took the affidavit and application form to a local judge for review. After recommending some minor changes to the application itself the judge found probable cause to search, signed the application and informed the police that they had sufficient authority to execute the search of the defendant's residence. The police then executed the search obtaining crucial evidence.

Prior to trial, the defendant moved to suppress the evidence based upon the warrant's failure to describe with particularity the things to be seized. The trial court allowed the evidence in, recognizing that the officers had acted in "good faith" in executing the warrant. The Massachusetts Supreme Judicial Court reversed and would not have allowed the evidence to be used.

The U.S. Supreme Court, in reviewing both the Leon and Sheppard cases took the opportunity to explain the purpose behind the Exclusionary Rule and its current application in the Fourth Amendment area.

The Court reviews the history of the rule as it has come down through cases such as Mapp v. Ohio (cited above) and remarks that it has never been a mandatory requirement of the Fourth Amendment to the Constitution. Specifically, the Court notes that the Fourth Amendment 'has never been interpreted to proscribe the introduction of illegally seized evidence in all proceedings or against all persons' (Leon at 3275 quoting Stone v. Powell, 428 U.S. 465 (1976)). The Court goes further and states that the underlying purpose of the rule is

to deter unlawful police conduct rather than create a personal Fourth Amendment right to suppression for the person aggrieved (Leon at 3276). In as much as the Exclusionary Rule is a rule created by the courts and not set forth in the Constitution, the Court sets down two exceptions where officers have performed their duties in good faith.

First, based on the facts of the Leon case, the court creates an exception where officers, in objective and reasonable good faith, act upon a judicial determination that probable cause to search exists. In Leon although the officers acted reasonably in relying on the authority of the warrant signed by the judge, the warrant was faulty. If one were to strictly apply the Exclusionary Rule, without regard to its purpose, the officers' acts would stand condemned and the evidence suppressed. Since the purpose of the rule is to deter unlawful police conduct and since there was no unlawful police conduct no purpose is served by excluding the evidence. Exception number one then becomes: where police officers act in good faith reliance upon a judicially issued search warrant, then even though the warrant may be found upon review by the proper court to be lacking in probable cause in the affidavit, the evidence will not be excluded. Thus the Supreme Court reversed the Court of Appeals in Leon.

Exception number two, drawn from the facts of the Sheppard case, becomes: where police officers act in good faith reliance upon a judicially issued search warrant, then, even though a technical error in the warrant by the issuing judge later invalidates it, the evidence will not be excluded. As such, the Supreme Court reversed the Supreme Judicial Court in Sheppard.

Leon and Sheppard serve to clarify the intent and purpose behind the Exclusionary Rule as it has been with us since Mapp v. Ohio and provide that an officer's good faith efforts in executing search warrants will not be discarded merely because of judicial error in the warrant's issuance.

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