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Recent Developments: Chase v. State: Leon "Good Faith" Exception To The Exclusionary Rule Extended To Probation Revocation Proceedings.

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of the PDA. With support from business groups and the Reagan administration, petitioners claimed that the PDA requires pregnant workers to be treated the same as, but not better than, workers with other disabilities. Based on the legislative history behind the enactment of the PDA, the Court agreed with the court of appeals' conclusion that its purpose is to provide "a floor beneath which pregnancy disability benefits may not drop – not a ceiling above which they may not rise." *Guerra*, 758 F.2d at 396. The 1978 amendment was passed specifically to overturn a 1976 Supreme Court decision in *General Electric Co. v. Gilbert*, 429 U.S. 125 (1976) which had held that discrimination on the basis of pregnancy was not sex discrimination under Title VII. The Court further explicated that Congress intended the Act "to provide relief for working women and to end discrimination against pregnant workers," and that had Congress intended to *prohibit* preferential treatment, it could have expressly done so within the PDA itself. In support of this latter conclusion, the Court noted similar state statutes in force at the time the PDA was enacted, and the House and Senate reports which suggested that these laws would continue in effect under the Act. Finally, the Court found that § 12945(b)(2) of the California statute is not inconsistent with the PDA because both "achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group . . . of employees over other employees." 474 U.S. ____ (1986), citing Griggs v. Duke Power Co., 401 U.S. 424, 429-430 (1971).

The last part of petitioners' claim stated that § 12945(b)(2) requires employers to violate Title VII because they cannot comply with both the federal and state law. The Court was quick to invalidate this argument, stating that the California statute merely establishes benefits that employers must provide to pregnant workers, and that it does not prevent employers from giving comparable benefits to other disabled employees. In sum, the Court denied petitioners' facial challenge to § 12945 (b)(2), ruling that the special benefits provided by the statute as construed by the Fair Employment and Housing Commission do not violate federal civil rights laws. "By taking pregnancy into account," Justice Marshall said, "California's pregnancy disability leave statute allows women, as well as men, to have families without losing their jobs." 474 U.S. ____ (1986).

In his dissenting opinion, Justice White felt that the California statute was "in square conflict" with the federal law because it requires "every employer to have a disability leave policy for pregnancy even if it has none for any other disability." Therefore, the state statute is pre-empted by the federal law. In pointing to the plain language of the PDA, Justice White wrote that it clearly mandates equal treatment for employees, including pregnant workers, and that it does not intend pregnancy to be in a class by itself within Title VII. Further, the minority felt that the Court's interpretation of the PDA with respect to the state statute places an unfair burden on California employers by requiring them to implement new minimum disability leave programs to satisfy both the state and federal laws.

The effect of this decision on other state statutes is clear. While not mandating the type of preferential treatment afforded in California, the holding in *Guerra* evidences the Court's willingness to uphold similar statutes in the future as non-violative of discrimination laws. Those states which decide to enact preferential treatment statutes may find that they discourage employers from hiring women.

Maryland has included pregnancy in its fair employment practices laws, but not to the same extent as California. Article 49B, § 17 of the Annotated Code of Maryland could not be construed as requiring the "special treatment" involved in *Guerra*. The statute merely calls for equal treatment with respect to pregnancy, stating that any insurance or sick leave plan "shall be applied to disability due to pregnancy or childbirth on the *same* terms and conditions as they are applied to other temporary disabilities subject to the provisions of this section." (Emphasis added).

– Barbara E. Wixon

Chase v. State: LEON "GOOD FAITH" EXCEPTION TO THE EXCLUSIONARY RULE EXTENDED TO PROBATION REVOCATION PROCEEDINGS.

In a case of first impression, the Court of Special Appeals of Maryland in *Chase v. State*, 68 Md. App. 413, 511 A.2d 1128 (1986) ruled that generally, the exclusionary rule may not be applied to probation revocation proceedings. In so holding, the court of special appeals has followed the trend of a majority of other jurisdictions.

Appellant Jerome Edwin Chase was convicted of robbery by the Circuit Court for Prince George's County. His sentence was suspended in favor of five years probation. Two years later, after he had already been cited and resentenced for probation violations, Chase was arrested and charged with intent to distribute marijuana and simple possession. While the criminal case was pending, the State filed a petition to revoke Chase's probation; alleging a failure to "obey all laws." At the trial for the criminal charges, the trial court found the Appellant's arrest to be without probable cause and suppressed the evidence recovered from him at the arrest. Two months later, the State dismissed the criminal charges. However, the petition to revoke Chase's probation was not dismissed.

At his probation revocation hearing, Appellant moved (based on the exclusionary rule) to have the evidence seized at the time of his arrest suppressed, or have the proceeding dismissed. The court, in denying Chase's motion applied a balancing test and determined that "the probation process and community safety interests far outweigh any deterrent effect of the exclusionary rule." In light of their finding, the lower court therein ruled that the exclusionary rule did not apply to probation revocation proceedings.

In dealing with this case of first impression, the court of special appeals traced the chronological history of the exclusionary rule at the Supreme Court level from *Wolf v. Colorado*, 338 U.S. 25 (1949) to the present. Judge Wilner, writing for the majority, noted that even before *Mapp v. Ohio*, 364 U.S. 643 (1961), [which overturned *Wolf v. Colorado*, when it held that "all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court;" *Mapp*, 367 U.S. at 643], "the [Supreme] Court has viewed the exclusionary rule as a deterrent rather than a redressive measure", *Chase*, 68 Md. App. at 419, 511 A.2d 1128. At the end of their historical analysis, the court herein recognized the fact that the balancing test [established in *U.S. v. Leon*, 468 U.S. 894 (1984)] "remains an integral part of the decisional law in this area." *Chase* at 420, 511 A.2d 1128. In *Leon*, the Supreme Court actually retracted the exclusionary rule by withdrawing its application to evidence obtained in reasonable reliance on a search warrant issued by a neutral magistrate which was later found to be unsupported by probable cause. The deterrent effect of the exclusionary rule on the police would be insignificant and is greatly outweighed by its detrimental effect on criminal prosecutions.

In their analysis of Maryland case law on the application of the exclusionary rule, the court of special appeals looked to *Logan v. State*, 289 Md. 460, 425 A.2d 632 (1981), where the Court of Appeals of Maryland adopted the ruling of *U.S. v. Lee*, 540 F.2d 1205 (4th Cir.) *cert. denied* 429 U.S. 894 (1976) and declined to extend the exclusionary rule to sentencing

proceedings. The court of appeals' rationale was that the exclusionary rule's additional deterrent effect would be insignificant or is greatly outweighed by its detrimental effect. However, the court therein concluded that if it can be shown that the illegally obtained evidence provided an incentive for the illegal seizure, the exclusionary rule would then apply. Such incentive would be evidenced by proof that seizure of the evidence was motivated by the possibility of enhancing the accused's sentence. *See Logan*, 289 Md. at 486 and *Lee*, 540 F.2d at 1212.

The court in *Chase* also analyzed how evidence falling under this category is handled in probation revocation proceedings nationwide. Although the court noted semantical differences in the various approaches, it found that the prevailing approach applied is the "cost/benefit analysis". "A probation revocation proceeding is not a criminal prosecution but is more in the nature of an administrative hearing intimately concerned with the probationer's rehabilitation. Thus, the court must balance the competing interests of the community with the rehabilitative goal of probation." *Chase*, 68 Md. App. at 422, 511 A.2d 1128. In light of this standard, the court concluded that the exclusionary rule generally did not apply to probation revocation proceedings. Combining Maryland case law with the semantical variations that exist nationwide, the court then incorporated a good faith exception into their newly adopted rule. In discussing their standard, Judge Wilner wrote:

> We agree, as a general proposition, that the deterrent effect of such an application [of the exclusionary rule] will be minimal and that whatever marginal deterrent benefit might accrue would be far outweighed by the harmful effect of denying access to relevant information concerning a probationer's behavior. . . . [Nevertheless], [w]e cannot permit the police to use this as an incentive to violate the Fourth Amendment. . . . [W]e think the best way to deter individual violations is simply to apply the exclusionary rule upon a showing that the police did not act in good faith in effecting the search and seizure. The "good faith" standard . . . encompasses all aspects of the officer's actions—how egregious the violation was, whether the officer knew the person was on probation . . . , what the circumstances were that led to the seizure.

Chase, 68 Md. App. at 425, 426, 511 A.2d 1128.

In concluding their discussion of the "good faith" exception, the court held that the burden is on the defendant initially to produce lack of good faith. Upon this production, the burden then shifts to the State to prove otherwise.

At the time of publication this case was set for argument before the Court of Appeals of Maryland. Although the court of appeals granted certiorari, it is doubtful that the case will be reversed because the court of special appeals' reasoning follows the national trend. *Chase* should help in lessening the frustration the law enforcement community feels in their pursuit of justice and community protection. It remains to be seen whether their pursuit will become a reality.

—Christopher Hale

Jersey Shore State Bank v. United States: IRS *NOT* REQUIRED TO PROVIDE NOTICE AND A DEMAND FOR PAYMENT TO A THIRD-PARTY LENDER PRIOR TO INITIATING A CIVIL SUIT TO COLLECT EMPLOYMENT TAXES

In *Jersey Shore State Bank v. United States*, 479 U.S. ____, 87-1 U.S.T.C. para. 9131 (1987), the Supreme Court in a unanimous decision held that the IRS was not required to provide notice and a demand for payment to a third-party lender who is liable under I.R.C. § 3505 prior to initiating a civil suit to collect employment taxes. This decision resolved a conflict between the circuits and is consistent with the interpretation of the Third and Ninth circuits.

The Supreme Court in *Jersey Shore State Bank* considered the relationship between I.R.C. § 3505 (which provides for personal liability on the part of third parties paying or providing funds for wages) and I.R.C. § 6303(a) (which requires that notice of an assessment be provided to persons liable for unpaid taxes before an assignment can be imposed). In rejecting the bank's claim that the government was required under I.R.C. § 6303(a) to provide notice and demand for payment to a lender bank that is liable under I.R.C. § 3505, the Court determined that a third-party lender is not the "person" intended to be protected under I.R.C. § 6303(a).

I.R.C. § 3505 applies to a third-party lender, surety or other person who is not an employer, but who pays wages either directly to that employee or group of employees, or supplies the funds to pay those employees. I.R.C. § 3505(a) imposes liability on those lenders, sureties or persons for a sum equal to any unpaid withholding taxes and interest if the wages were paid directly to the employee. However, under I.R.C. § 3505(b), if they did not pay the employees directly, but provided the funds to the employer, their liability would be limited to 25% of the amount of the loan. Prior to this section's enactment in 1966, the employers were the only individuals subject to liability.

I.R.C. § 3505 was enacted in order to correct problems which occurred when employers obtained net payroll financing. *United States v. Jersey Shore State Bank*, 781 F.2d 974, 976 (3d Cir. 1986). Net payroll financing, used frequently in the construction industry, is a practice whereby the lender provides funds for payment of employees' net wages, but not for payment of withholding taxes. This type of financing usually results when a financially strapped sub-contractor cannot meet its payroll obligations. The general contractor will then pay the sub-contractor's employees' net wages. Problems arise when the sub-contractor is unable to pay withholding taxes to the government while the government is required to credit the employees account. In such cases "[r]ecourse against the employer [is] often fruitless, because it [is] frequently without any financial resources. And the government could not proceed against third parties who paid the net wages because they were not 'employers' under the code, and therefore not liable for the taxes." *United States v. Jersey Shore State Bank*, 781 F.2d 974, 976 (3d Cir. 1986).

In the current case, Jersey Shore State Bank provided net payroll financing to Pennmount Industries, Inc., from the fourth quarter of 1977 through the first quarter of 1980. The government in its complaint alleged that Jersey Shore paid wages directly to Pennmount employees and supplied funds for the purpose of paying wages, *with the knowledge* that Pennmount did not intend to or would not be able to make timely payments or deposits of the federal taxes required to be deducted and withheld. The complaint also alleges that the Bank's liability is $76,547.57 plus interest under I.R.C. § 3505(a), and $72,069.00 plus interest under I.R.C. § 3505(b). The district court granted the bank's motion for summary judgment because of the government's failure to provide timely notice as required by I.R.C. § 6303(a). The United States appealed and the third circuit reversed. In examining the legislative history of the statute, the third circuit concluded that 6303(a) did not apply to collection actions under 3505 because 6303(a) was intended to protect taxpayers from harsh administrative collection procedures. The court noted, however, that under I.R.C. § 3505, the third-party lender was not in danger of having any of its property seized or attached to