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Constitutional Law - Fourth Amendment - Good Faith Exception to the Exclusionary Rule

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CONSTITUTIONAL LAW—FOURTH AMENDMENT—GOOD FAITH EXCEPTION TO THE EXCLUSIONARY RULE—The United States Supreme Court held that the good faith exception to the exclusionary rule applies to evidence seized in violation of the Fourth Amendment of the United States Constitution due to clerical errors by court employees.

Arizona v. Evans, 115 S. Ct. 1185 (1995).

In January of 1991, a Phoenix police officer stopped Isaac Evans ("Evans") for driving the wrong way on a one-way street.[1] After discovering that Evans' driver's license had been suspended, the officer checked Evans' information on a computer terminal in the police car.[2] The computer data not only confirmed the suspended license, but also indicated several outstanding misdemeanor warrants for Evans' arrest.[3] Because of the warrants, the officer placed Evans under arrest.[4] The officer then discovered, while placing handcuffs on Evans, that Evans had dropped what looked like a hand-rolled cigarette.[5] Upon examination of the cigarette, the officer noticed a scent of marijuana.[6] The officer searched the car and found a bag of marijuana under the car seat.[7] Evans was subsequently arrested and charged with possession.[8]

After Evans' arrest, the trial court discovered that the warrants for his outstanding misdemeanors had been quashed,[9]

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1. Arizona v. Evans, 115 S. Ct. 1185, 1188 (1995).

2. *Evans,* 115 S. Ct. at 1188.

3. *Id.* The misdemeanor warrants were issued for failure to appear to answer several traffic violations. *Id.* Misdemeanor is defined as "[o]ffenses lower than felonies and generally those punishable by fine, penalty, forfeiture or imprisonment otherwise than in penitentiary." BLACK'S LAW DICTIONARY 999 (6th ed. 1990).

4. *Evans,* 115 S. Ct. at 1188.

5. *Id.*

6. *Id.*

7. *Id.* at 1187.

8. *Id.* Under Arizona law, possession is defined as the voluntary act of a defendant knowingly exercising dominion or control over property. ARIZONA REV. STAT. ANN. § 13-105 (1990).

9. *Evans,* 115 S. Ct. at 1188. To quash means to annul or to make void. BLACK'S LAW DICTIONARY 1245 (6th ed. 1990). On December 13, 1990, the court

and hence invalid.[10] Evans argued that the marijuana discovered in his car should be suppressed because a judge had quashed the misdemeanor warrants seventeen days before.[11] Evans also argued that the good faith exception to the exclusionary rule[12] did not apply because it was not a police error, but rather a judicial error that caused the mistake.[13] The Chief Clerk of the Justice Court testified at the suppression hearing that there was no record of any court official placing any quashed warrants on file nor that anyone from the clerk's office had contacted the Sheriff's Office to indicate that such a motion had been completed.[14]

The Superior Court, Maricopa County, granted Evans' motion to suppress.[15] The court based its decision on the presumption that the state was at fault.[16] The court determined that there existed no distinction between actions of the police and those of the court, and both would constitute state action.[17]

The Arizona Court of Appeals reversed, holding that the exclusionary rule was not intended to be a deterring factor in the routines of court employees.[18] The Arizona Supreme Court reversed the decision of the court of appeals.[19] The supreme court disagreed with the distinctions between those "directly" and those "indirectly" involved in the law enforcement process.[20] The court suggested that the purpose behind such a

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issued an arrest warrant for Evans because he had failed to appear to answer for several traffic violations. *Evans*, 115 S. Ct. at 1188. Six days later a pro tem Justice of the Peace quashed the warrant after Evans appeared before him. *Id.*

10. *Evans*, 115 S. Ct. at 1188.

11. *Id.*

12. *Id.* The "good faith exception" to the exclusionary rule provides that evidence should not be suppressed when officers were acting in good faith and could not reasonably determine that a mistake had been made. BLACK'S LAW DICTIONARY 564 (6th ed. 1990). Officers may also reasonably rely on a magistrate's determination of probable cause. *Evans*, 115 S. Ct. at 1188.

13. *Evans*, 115 S. Ct. at 1188. The procedure of quashing a warrant begins with the Justice Court Clerk informing the warrant department in the Sheriff's Office when a warrant has been quashed. *Id.* The individual's name and the Sheriff's Office representative's name should then be recorded. *Id.* The Sheriff's Office must then remove the warrant from the computer. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. State v. Evans, 836 P.2d 1024, 1027-28 (Ariz. Ct. App. 1992), *vacated*, 866 P.2d 869, 872 (Ariz. 1994), *rev'd*, 115 S. Ct. 1185 (1995). The Arizona Court of Appeals specifically looked to the purpose of the exclusionary rule and determined that the purpose was to deter those directly associated with the arrest itself. *Evans*, 836 P.2d at 1027.

19. State v. Evans, 866 P.2d 869, 872 (Ariz. 1994), *rev'd*, 115 S. Ct. 1185 (1995).

20. *Evans*, 866 P.2d at 871-72. A part of the rationale used by the court was

holding was to enhance the efficiency of the responsible departments and directly punish those departments for any incompetence.[21] The Supreme Court of the United States granted certiorari to resolve the issue of whether the good faith exception to the exclusionary rule should apply to evidence seized in violation of the Fourth Amendment[22] due to clerical errors of state court employees.[23]

Chief Justice Rehnquist, writing for the majority,[24] first discussed the issue of whether the Court had jurisdiction.[25] The Court looked to *Michigan v. Long*,[26] in which the Court held that it would take jurisdiction over state court decisions rendered without a "plain statement" regarding "an independent and adequate state ground."[27] The Court proposed that the threat of taking jurisdiction over state court decisions would encourage state courts to develop distinct state constitutional jurisprudence, thus preserving the integrity of federal law.[28] The Court, adhering to the standards developed in *Long*, concluded that it had jurisdiction because the Arizona Supreme Court's decision was based on an interpretation of federal law.[29]

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that there was no distinction between clerical errors made by court clerks and those made by law enforcement officers. *Id.*

21. *Id.* at 872. The Arizona Supreme Court suggested, contrary to the court of appeals, that such a holding would serve a specific purpose and would affect the outcome of a court clerk's performance. *Id.*

22. *Evans*, 115 S. Ct. at 1189. The Fourth Amendment provides that:

> [T]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause, supported Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

U.S. CONST. amend. IV.

23. *Evans*, 115 S. Ct. at 1189.

24. *Id.* at 1187. Justices Scalia, Kennedy, and Thomas joined in the majority opinion. *Id.*

25. *Id.* at 1189. Evans argued that the Supreme Court lacked jurisdiction under 28 U.S.C. § 1257 due to the fact that the Arizona Supreme Court based its decision on a state statute and not the Fourth Amendment issue. *Id.* The statute, 28 U.S.C. § 1257, allows final judgments of a state's supreme court to be reviewed by the United States Supreme Court where the validity of a state statute is drawn into question on the ground of its being repugnant to the United States Constitution. 28 U.S.C. § 1257 (1988).

26. 463 U.S. 1032 (1983).

27. *Long*, 463 U.S. at 1032-33. The standards were based upon whether the state court decision rested primarily on federal law or was to be "interwoven" with federal law to the point that any independent state grounds appeared ambiguous, and therefore, application of federal law would be the most plausible solution. *Id.* at 1040-41.

28. *Evans*, 115 S. Ct. at 1189 (citing *Long*, 463 U.S. at 1041).

29. *Id.* at 1190 (citing Minnesota v. National Tea Co., 309 U.S. 551, 557 (1940)). The Court discussed the fundamental rights of states to be free to interpret

In order to determine whether the good faith exception to the exclusionary rule applied to the suppressed evidence in *Evans*, the Court used a three-part test first developed in *United States v Leon*.[30] The *Leon* three-part analysis was used in the context of police searches to determine whether the police had reasonably relied on a warrant, later found to have been invalid.[31] First, the Court looked to the historical purpose of the exclusionary rule, which was the prevention of misconduct of police, not judges.[32] Second, the Court found no incentives for a detached judge or magistrate to subvert any Fourth Amendment rights.[33] Finally, the Court found that there existed no factual basis in believing that the exclusionary rule would have a significant deterrent effect on judicial action.[34] In following this reasoning, the Court suggested that the application of the exclusionary rule in a situation caused by an erroneous computer error by a court employee would have no deterrent effect on the performance of employees responsible for recording quashed warrants.[35] The Court reasoned that the employees had no stake in the result of any particular prosecutions and that they were not directly engaged in the daily activities of law enforcement.[36] The Court also determined that it was relevant to consider the ramifications for police officers who might alter their routine behavior for fear of unknown court clerical errors.[37]

Justice O'Connor, in a concurring opinion,[38] discussed the overwhelming benefits that technology brings to the realm of law enforcement.[39] Justice O'Connor agreed with the majority

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the Constitution. *Id.* The Court also stated that such rights should not be barriers to the Supreme Court in obscure or ambiguous state court decisions. *Id.* The Court reaffirmed its authority as the final adjudicator. *Id.*

30. *Id.* at 1190. *See* United States v. Leon, 468 U.S. 897 (1984).

31. *Leon*, 468 U.S. at 905. The Court in *Leon* applied a three-part analysis in determining the applicability of the exclusionary rule as a means of deterring misconduct on the part of judicial officers issuing warrants. *Id.* at 916. *See* Illinois v. Krull, 480 U.S. 340, 348 (1987) (analyzing *Leon*).

32. *Evans*, 115 S. Ct. at 1189.

33. *Id.*

34. *Id.* at 1193.

35. *Id.* at 1192.

36. *Id.* at 1193.

37. *Evans*, 115 S. Ct. at 1193. *See also* Stone v. Powell, 428 U.S. 465, 540 (1976). The Court in *Stone* suggested that excluding evidence can only affect an officer's future conduct in a way that will make him less willing to perform his duties. *Stone*, 428 U.S. at 540.

38. *Evans*, 115 S. Ct. at 1193 (O'Connor, J., concurring). Justices Souter and Breyer joined in a separate concurrence. *Id.* at 1194.

39. *Id.* at 1195. Some of these benefits were the advanced computer based record keeping systems that aided in the facilitation of arrests and other computer

that the exclusionary rule imposes significant costs on society and should be applied prudently, but suggested that law enforcement officers must not act blindly in their reliance on new technology.[40] Justice O'Connor suggested that the benefits reaped by new technology carry with them a paralleling constitutional burden.[41] Justice Souter, with whom Justice Breyer joined in concurring, agreed with Justice O'Connor, yet added that the Court should not answer evidentiary questions regarding evolving technological changes that might soon be a part of contemporary lifestyles.[42]

Justice Stevens, in a dissenting opinion, addressed several of the issues raised by the majority.[43] First, Justice Stevens stated that a writ of certiorari should not have been granted because of a lack of jurisdiction.[44] Justice Stevens then commented on the retributive effect of not applying the good faith exception to the exclusionary rule which, in essence, would prohibit states from profiting from negligent conduct and would cause states to train their employees to be more efficient and precise.[45] Finally, Justice Stevens argued that the Court's reliance on *Leon* was inapplicable.[46] In *Leon*, Justice Stevens reasoned, it was the validity of the warrant that was at issue and not, as in this case, the mere existence of a warrant.[47]

Justice Ginsburg, with whom Justice Stevens joined, argued that by applying *Long* to find proper jurisdiction, the Court failed to use the lower court system as a legal thermometer in testing contemporary legal issues.[48] Justice Ginsburg suggested that the Court erred in its presumption that the Arizona

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aided law enforcement mechanisms that made for more efficient use of time. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* (Souter, J., concurring).

43. *Evans*, 115 S. Ct. at 1195 (Stevens, J., dissenting).

44. *Id.* Justice Stevens joined Justice Ginsburg's dissent in arguing that the Court departed from its settled law in Michigan v. Long, 463 U.S. 1032 (1983), as to the jurisdictional issue. *Evans*, 115 S. Ct. at 1195 (Stevens, J., dissenting). Justice Stevens suggested that the Court should apply the assumption that the Arizona Supreme Court ruled under its own state constitutional principles barring any unwarranted violations of individual rights, thereby insulating the decision from review. *Id.*

45. *Evans*, 115 S. Ct. at 1195

46. *Id.* at 1196.

47. *Id.* at 1198. Part of Justice Stevens' reasoning was that the non-existence of the warrant was due to clerical errors of employees who had no more regular or direct contact with police than with the magistrates or judges who issue the warrants. *Id.*

48. *Id.* at 1198 (Ginsburg, J., dissenting). Justice Ginsburg argued that Arizona's Supreme Court may validly rule for its people under its own state constitution on this issue. *Id.*

Supreme Court based its decision on federal law and that therefore, federal jurisdiction had not been established.[49] For this reason, Justice Ginsburg argued that the Court should have denied the writ of certiorari.[50]

The exclusionary rule is a judicially created theory that requires the suppression of evidence as a remedy for violations of the search and seizure protections guaranteed by the Fourth Amendment of the United States Constitution.[51] In *Weeks v. United States*,[52] the Court held that illegally seized evidence could not be introduced in federal prosecutions.[53] The issue of whether this doctrine was applicable in state criminal prosecutions through the Due Process Clause of the Fourteenth Amendment[54] was addressed in *Wolf v. Colorado*.[55] The *Wolf* Court declined to extend the *Weeks* rationale to state criminal proceedings.[56] *Wolf*'s holding was repudiated in *Mapp v. Ohio*,[57] in which the Court held that the Fourth Amendment's prohibition against the admission of illegally obtained evidence was applicable in state prosecutions.[58]

The Supreme Court has identified four exceptions to the exclusionary rule.[59] First, evidence obtained when police act in good faith reliance on a warrant will not be excluded.[60] Second, evidence with only a slight connection to the illegal conduct will not be excluded.[61] The third exception is invoked when the

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49. *Id.*

50. *Evans*, 115 S. Ct. at 1203.

51. BLACK'S LAW DICTIONARY 564 (6th ed. 1990). For historical background on the exclusionary rule, see Potter Stewart, *The Road to* Mapp v. Ohio *and Beyond: The Origins, Development and Future of the Exclusionary Rule in Search-and-Seizure Cases*, 83 COLUM. L. REV. 1365 (1983).

52. 232 U.S. 383 (1914).

53. *Weeks*, 232 U.S. at 398. The Court reasoned that if the fruits of an unreasonable search were introduced at trial, "the protection of the Fourth Amendment declaring [the defendant's] right to be secure against such searches and seizures [would be] of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution." *Id.* at 393.

54. The Due Process Clause provides in part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law. . . ." U.S. CONST. amend. XIV.

55. 338 U.S. 25 (1949), *overruled by* Mapp v. Ohio, 367 U.S. 643 (1961).

56. *Wolf*, 338 U.S. at 33. The Court held "that in a prosecution in a State court for a State crime the Fourteenth Amendment does not forbid the admission of evidence obtained by an unreasonable search and seizure." *Id.*

57. 367 U.S. 643 (1961).

58. *Mapp*, 367 U.S. at 655. The Court held "that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court." *Id.*

59. *See Twenty-First Annual Review of Criminal Procedure: United States Supreme Court and Courts of Appeals 1990-1991*, 80 GEO. L. J. 939, 1096 (1993).

60. *See* United States v. Leon, 468 U.S. 897, 913, 920 (1984).

61. *See* Wong Sun v. United States, 371 U.S. 471, 487-88 (1963). In *Wong*

challenged evidence is discovered through a source that is independent of the illegal activity.[62] Finally, evidence that would have inevitably been found by a lawful means is not excluded.[63]

Central to the Court's holding in *Evans* was the good faith exception to exclusionary rule, first created in *United States v. Leon*.[64] In *Leon*, the issue was whether the exclusionary rule should apply to the admissibility of evidence discovered by police officers acting in good faith reliance on a search warrant ultimately found to be lacking probable cause but issued by a neutral magistrate.[65] The Supreme Court reversed and held that evidence obtained in reasonable reliance on an invalid search warrant was admissible.[66]

The *Leon* Court stressed that the exclusionary rule was designed to deter police misconduct and not to punish judges or magistrates.[67] The Court found that no evidence existed that showed a motive or purpose for a neutral judge or magistrate to purposely violate a defendant's Fourth Amendment rights.[68]

Sun, the defendant had been arrested without probable cause but later returned voluntarily to give an unsigned confession. *Wong Sun*, 371 U.S. at 491, 476-77. The Court held that the means for obtaining the confession was not causally linked to the illegal arrest. *Id.* at 488.

62. *See* Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392 (1920).

63. *See* Nix v. Williams, 467 U.S. 431, 434 (1984). In *Nix*, the discovery of a murder victim's body was held admissible, even though the statements procuring the information as to the body's location were obtained in violation of the Constitution, because a general search of the area would have discovered the body. *Nix*, 467 U.S. at 434.

64. 468 U.S. 897 (1984).

65. *Leon*, 468 U.S. at 900. In 1981, a confidential informant notified the Burbank Police Department that a large quantity of cocaine and methaqualone was being sold from a Burbank residence. *Id.* In an extensive investigation, police identified the owner of the residence and the driver of the car that continually visited the residence and each time left with a small package. *Id.* The police found that Ricardo Del Castillo ("Del Castillo") owned the car in question and that Del Castillo had a prior arrest record. *Id.* A check of Del Castillo's probation records led officers to Alberto Leon ("Leon"), who was listed as Del Castillo's employer. *Id.* Prior to the investigation, Burbank Police obtained information from a Glendale Police Officer who learned from an informant that Leon stored large quantities of methaqualone at his residence in Glendale. *Id.* Based on these facts and other observations, the magistrate issued Officer Cyril Rombach a facially valid search warrant. *Id.* at 902. During the searches of the residence and automobiles, the police confiscated varying amounts of drugs and the defendants were indicted for conspiracy to possess and distribute cocaine. *Id.* The district court granted motions to suppress and found that the warrants lacked probable cause. *Id.* The Ninth Circuit Court of Appeals affirmed the district court's decision, holding that affidavits that suggested criminal activity were not sufficient for probable cause. *Id.*

66. *Id.* at 901.

67. *Id.* at 916.

68. *Id.* at 917. The Court suggested that the application of the exclusionary rule served no purpose in deterring improper conduct of judges or magistrates since

The Court discussed the validity of a good faith claim by suggesting that the judgment of a detached and neutral magistrate was significantly more reliable in safeguarding a defendant's Fourth Amendment rights against improper searches and seizures than a police officer who had a significant stake in the outcome of searches and seizures.[69] The Court also suggested that reasonable minds might differ as to what constitutes probable cause in a particular situation; therefore, great deference should be given to a magistrate's determination.[70]

Another consequence of the exclusionary rule that the *Leon* Court considered was a cost-benefit analysis which weighed the cost of losing valuable evidence needed in the prosecution of defendants against the benefit of deterring Fourth Amendment violations.[71] The Court concluded that the costs of the rule were two-sided because by disallowing certain evidence, the rule impeded the truth-finding process.[72] The Court also noted that indiscriminate application of the rule generates disrespect for the law and the justice system.[73]

In a companion case to *Leon*, *Massachusetts v. Sheppard*,[74] the Court addressed the issue of whether the exclusionary rule applies to evidence discovered by police officers acting in good faith reliance on a facially deficient warrant.[75] The Court applied the good faith exception to the exclusionary rule and allowed evidence seized from the facially deficient warrant to be presented in court.[76]

While gathering evidence in a murder investigation, police drafted an affidavit in support of a search warrant application

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these officials are generally detached from the direct crime fighting process. *Id.*

69. *Id.*

70. *Leon*, 468 U.S. at 914.

71. *Id.* at 908. The Court articulated concerns regarding the inevitable consequences of the rule in which the defendant may go free or get a reduced sentence. *Id.* Such consequences the Court noted will inevitably offend the purpose and basic objective of the criminal justice system. *Id.*

72. *Id.* at 907.

73. *Id. See also* Stone v. Powell, 428 U.S. 490 (1976) (holding that a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search and seizure was introduced at trial when a state has provided an opportunity for full and fair litigation of the Fourth Amendment claim).

74. 468 U.S. 981 (1984).

75. *Sheppard*, 468 U.S. at 988.

76. *Id.* at 984. The warrant at issue in *Sheppard* failed to specify the items that the search sought to uncover. *Id.* at 987. In contrast, the *Leon* warrant, while facially valid, was not supported by probable cause. *Leon*, 468 U.S. at 902-03.

requesting authorization to search the defendant's residence.[77] Because it was Sunday and the courts were closed, the police took another municipality's controlled substance application and made certain changes.[78] A judge subsequently authorized the application after further revision.[79] Even after subsequent judicial revision and authorization, the warrant was found to be substantively deficient, but the Court adhered to the principles set forth in *Leon* and refused to exclude the evidence.[80]

The good faith exception was again considered in *Illinois v. Krull*.[81] *Krull* presented the question of whether an exception to the exclusionary rule should be recognized when a police officer reasonably relied on a statute authorizing warrantless searches which was later found to be in violation of the Fourth Amendment.[82] The Court held that the exclusionary rule did not apply to evidence seized by police acting in an objectively reasonable manner on an unconstitutional statute.[83] The Court reasoned that the suppression of evidence found by a police officer acting in an objectively reasonable reliance on an unconstitutional statute had little deterrent effect on a judge or magistrate.[84] The Court found it unreasonable to suggest that judges and magistrates were inclined to subvert or ignore Fourth Amendments rights.[85] The Court held that unless a statute was clearly unconstitutional, it was unreasonable to expect a police officer to accurately determine the constitutionality of the statute.[86]

The Court then considered the factual difference between *Leon* and *Krull*: the effect of the exclusion of evidence on

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77. *Sheppard*, 468 U.S. at 988.

78. *Id.* at 985.

79. *Id.* at 986. The judge concluded from the affidavits that probable cause existed and that changes would be made to the warrant, yet the changes made by the judge did not change the substantive portion of the warrant. *Id.*

80. *Id.* at 987-88.

81. 480 U.S. 340 (1987).

82. *Krull*, 480 U.S. at 342. *Krull* is contrasted with *Leon* in that, in *Leon*, the Court considered the reliance on a warrant whereas in *Krull*, the Court considered reliance on an unconstitutional statute. *Id.* The statute in question permits state officials to examine the premises of automotive parts dealers to determine the accuracy of their state mandated records. ILL. REV. STAT. ch. 95 1/2 ¶¶ 5-100 to 5-801 (1985).

83. *Krull*, 480 U.S. at 346, 361. Justice O'Connor filed a dissenting opinion in which Justices Brennan, Marshall, and Stevens joined. *Id.* at 361 (O'Connor, J., dissenting).

84. *Id.* at 348.

85. *Id.*

86. *Id.*

judicial officers as opposed to legislators.[87] As stated in *Leon*, one of the initial purposes of the exclusionary rule was to deter police misconduct, not judicial officers' misconduct.[88] The Court argued that the same rationale applied in *Krull* to the legislature because legislators were also detached and were not direct adjuncts of a law enforcement group.[89]

The Court next determined if the exclusion of the evidence would actually have a deterrent effect.[90] The Court noted that the greatest deterrent effect on the legislature was the judicial invalidation of a legislative statute.[91] In using the same reasoning as *Leon,* the Court reversed the lower court, applying the good faith exception to the exclusionary rule.[92]

The United States Court of Appeals for the Seventh Circuit considered the applicability of the exceptions to the exclusionary rule to technical defects of warrants in *United States v. Hornick*.[93] In *Hornick,* the issue was whether there was a valid warrant issued by a Wisconsin judge to Wisconsin state officials pursuant to Rule 41 of the Federal Rules of Criminal Procedure[94] when a federal agent accompanied state officers in a search and participated in questioning the defendant.[95] According to the court of appeals, the rule of law regarding technical defects of warrants was clearly set forth in *Leon.*[96]

In its limited analysis, the court adhered to the standard rule of law and suggested that it would be unlikely that any violation of Rule 41 would call for suppression except when the Warrant Clause[97] of the Fourth Amendment was offended.[98] Because multiple remedies were available for violations of federal rules

87. *Id.* at 350.
88. *Leon*, 468 U.S. at 916.
89. *Krull*, 480 U.S. at 350-51.
90. *Id.* at 351-52.
91. *Id.* at 361.
92. *Id.*
93. 815 F.2d 1156 (7th Cir. 1987).
94. *Hornick*, 815 F.2d at 1158. *See* FED. R. CRIM. P. 41. Rule 41 states that upon request of a federal law enforcement officer, a search warrant authorized by this rule may be issued by a federal magistrate judge, or state court judge of record within the federal district, for a search of a person or property that is within a district. *Id.*
95. *Hornick*, 815 F.2d at 1156.
96. *Id.* at 1158.
97. The Fourth Amendment provides "that no Warrants shall issue, but upon probable cause, supported by Oath or affirmations, in particularly describing the place to be searched." U.S. CONST. amend. IV.
98. *Hornick*, 815 F.2d at 1157. Hornick, the defendant, argued that since a federal agent participated in the state authorized warrant then a federal warrant should have also been issued by a federal judge to comply with Rule 41. *Id.*

similar to Rule 41, the court did not consider the release of the defendant.[99]

In 1990, the issue of the good faith exception to the exclusionary rule arose in an Eighth Circuit Court of Appeals case, *United States v. Curry*.[100] The question presented in *Curry* was whether the evidence obtained during a search was admissible when, due to an official's clerical error, the warrant inadequately described the items to be seized.[101] The court examined the issue of whether an objectively reasonable officer could have relied upon the information in the affidavit.[102] The court found this case analogous to *Sheppard* in that the court applied the *Leon* exception to evidence seized in conjunction with a technically defective warrant caused by clerical error.[103] The affidavit stated that the police had computer printouts of outgoing phone calls from three hotels involved in a robbery investigation.[104] In actuality, the police had printouts from one hotel, a handwritten record of local phone calls from another, and notes found in the suspect's room containing phone numbers of a residence under investigation.[105] The detective who wrote the warrant admitted to his poor choice of words, but testified that he tried to the best of his ability to write an accurate affidavit, and he was in no way attempting to mislead the judge who issued the warrant.[106]

The court found that an objectively reasonable officer could have relied on the information in the affidavit.[107] The court reasoned that the responsibility of the clerical composition of the warrant was on the issuing authority, and therefore, it was the judge or magistrate who must review and find any inadvertent errors or omissions.[108] This line of analysis led the court to conclude, in light of the purpose of the exclusionary rule as set forth in *Leon*, that the purpose of the rule was not to deter the actions of judges or magistrates, but rather those of police officers.[109] The court held that, since the officer acted in an objectively reasonable manner in applying for a search warrant

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99. *Id.*
100. 911 F.2d 72 (8th Cir. 1990).
101. *Curry*, 911 F.2d at 77. The application, due to an issuing official's error, failed to include the proper information that was found in the affidavit. *Id.*
102. *Id.*
103. *Id.*
104. *Id.*
105. *Id.*
106. *Curry*, 911 F.2d at 77.
107. *Id.*
108. *Id.*
109. *Id.* at 77-78.

and responsibility for the clerical error was born by the magistrate, the evidence should not have been suppressed.[110]

The *Evans* decision was based upon the two major cases setting forth the good faith exception to the exclusionary rule. The *Sheppard* and *Leon* cases were significant developments in contemporary Fourth Amendment jurisprudence. *Sheppard* set forth an exception to the exclusion of evidence where such evidence was based upon a facially deficient warrant upon which an officer reasonably relied.[111] *Leon* set forth the same exception to evidence obtained in reasonable reliance on a warrant which was later found to be lacking probable cause.[112] *Evans* followed the same logic in allowing the admission of evidence found in a search that resulted from the clerical error of a judicial employee.[113] In its analysis, the Court in *Evans* looked to the purpose of the exclusionary rule which is to deter police misconduct.[114] The analysis set forth by the Court was based upon the presumption that, in making clerical errors, court employees are not inclined to purposely violate a defendant's Fourth Amendment rights and that enforcement of the exclusionary rule would have no significant effect due to the employees' indirect stake in the prosecutorial process.[115] The release of a criminal due to clerical errors seems hardly a punishment of court employees.

Another issue raised concerning the exclusionary rule was the punishing effect on law enforcement officers. In discussing police officers' conduct, Justice White, in his dissenting opinion in *Stone v. Powell*,[116] suggested that the only way the exclusion of evidence would affect an officer's future conduct would be by making the officer less willing to perform his duties.[117] Justice White's concern was based on the officer's fear that, when confronted with a similar situation, any effort may proceed to no

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110. *Id.* at 77.

111. *Sheppard,* 468 U.S. at 981. *See supra* notes 74-80 for a discussion of *Sheppard.*

112. *Leon,* 468 U.S. at 897. *See supra* notes 64-73 and accompanying text for a discussion of *Leon.*

113. *Evans,* 115 S. Ct. at 1185.

114. *Id.* at 1193.

115. *Id.*

116. 428 U.S. 465 (1976).

117. *Powell,* 428 U.S. at 540 (White, J., dissenting). The Court denied a defendant habeas corpus relief on the grounds that evidence obtained through an unconstitutional search and seizure was introduced at trial. *Id.* at 468-69. In analyzing the exclusionary rule, the Court stated that the effectuation of the Fourth Amendment was minimal when balancing the costs to society by application of the exclusionary rule. *Id.* at 494.

avail due to another actor's incompetence.[118] It is a precarious position to place our law enforcement officers at the day-to-day mercy of a judicially created exclusionary rule when they are attempting to ferret out crime from our society.

A similar line of reasoning would apply to a police officer relying on a judge's or a magistrate's determination of the existence of probable cause under a particular situation. It is the judge who is supposed to have the legal acumen to objectively analyze the facts and render a decision as to the constitutionality of a search. On a case-by-case basis, the uniqueness of each situation may also create just as unique constitutional determinations. Because reasonable minds may differ as to a determination of probable cause, reasonable minds may also validly rely on these determinations. Even though a police officer could not blindly rely on a warrant, it should not be a law enforcement officer's responsibility to review judicial determinations.[119] Certain extreme situations will call for a police officer to reasonably doubt the validity of the issued warrant.[120]

Courts can now examine and observe the difficulty of implementation of the good faith exception. In some cases, the factual situations concerning relied upon information is clear and concise. The mistake in *Evans* was observed from a police car's computer terminal where officers consistently sought information.[121] The difficulty courts will have is in creating a test to properly identify a sincere good faith mistake. Courts must balance the purposes of the good faith exception with the possible erosion of Fourth Amendment rights due to judicial and political abuse. The good faith exception cannot become a legal excuse for police to abuse inalienable rights to be free from unreasonable searches and seizures. Courts must use extreme discretion when creating and implementing exceptions to the sole manifestation of American citizens' individual rights.

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118. *Id.* at 540.

119. *Leon*, 468 U.S. at 897 (holding that an officer must act in an objectively reasonable manner when relying on a magistrate's probable cause determination on the technical sufficiency of a warrant).

120. *Id.* at 923.

121. *Evans*, 115 S. Ct. at 1188.