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NOTE

The State Constitution as a Source of Individual Liberties: Declining to Apply the “Good-Faith” Exception to the Exclusionary Rule in *Commonwealth v. Edmunds*

In *Commonwealth v. Edmunds*,¹ the Pennsylvania Supreme Court held that under the provisions of the Pennsylvania Constitution,² there is no “good-faith” exception to the exclusionary rule.³ Accordingly, drugs seized pursuant to a search warrant issued without probable cause had to be suppressed, regardless of the acting officer’s belief in its validity.⁴ This decision runs directly contrary to the United States Supreme Court’s recognition of such an exception in the landmark decision *United States v. Leon*.⁵

Construing state constitutional counterparts of provisions of the Bill of Rights as providing more protection to the citizens of individual states than the federal provisions themselves is becoming increasingly common.⁶ As a part of maintaining a healthy federalism, state

1. 586 A.2d 887 (Pa. 1991).

2. Pa. Const. art. 1, § 8.

3. *United States v. Leon*, 468 U.S. 897 (1984). The United States Supreme Court recognized a “good-faith” exception to the exclusionary rule’s basic requirement that evidence obtained in violation of the Constitution be excluded from admission at trial. Under this exception, evidence seized pursuant to a warrant obtained in good faith and issued by a neutral and detached magistrate, but later found to be defective, may still be used by the prosecution in its case-in-chief. *Id.* at 913.

4. *Edmunds*, 586 A.2d at 906.

5. 468 U.S. 897 (1984).

6. William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*,

courts are at liberty to place greater restraints on police activity than the Federal Constitution requires, as long as their decisions are based entirely on state law and do not conflict with federal law.⁷ The interpretation by the court in *Edmunds* of the exclusionary rule is just such a decision. Further analysis of the exclusionary rule and the "good-faith" exception in both the state and the federal context is warranted to fully understand the impact of the court's holding in this case.

In *Commonwealth v. Edmunds*⁸ a state trooper, in response to a telephone call, met with two hunters who informed him that they had seen marijuana growing in a white, corrugated building in a nearby wooded area.⁹ The officer made sure that the two men were familiar enough with marijuana to be able to identify it, and then, on the following day, flew over the area in question and spotted the building.¹⁰

A search warrant was issued in response to the trooper's sworn affidavit, and he, along with several other state policemen, proceeded to the Edmund's residence.¹¹ Although marijuana had only been observed in the white, corrugated building, the warrant was issued for both the residence and for the building.¹² When the officers arrived at the residence, they were informed by Edmunds that he rented the building in question to another man.¹³ Edmunds went upstairs to retrieve the lease, accompanied by an officer. At the top of the stairs, in plain view, the officer saw four bags containing a green substance later determined to be marijuana.¹⁴ Edmunds was then arrested.¹⁵ A subsequent search of the white, corrugated building revealed growing marijuana plants as well.¹⁶

Prior to the trial, Edmunds filed a motion to suppress the marijuana, maintaining that the police officer's affidavit was insufficient to establish probable cause for the issuance of the warrant.¹⁷ The trial court held that the affidavit was deficient because it failed to set

90 HARV. L. REV. 489 (1977).

7. Timothy R. Lohraff, *United States v. Leon and Illinois v. Gates: A Call for State Courts to Develop State Constitutional Law*, 1987 U. ILL. L. REV. 311 (1987).

8. *Commonwealth v. Edmunds*, 586 A.2d 368 (Pa. 1991).

9. *Id.* at 888.

10. *Id.* at 889.

11. *Id.*

12. *Id.* Although the warrant was held to be insufficient for failing to set forth the time frame in which the marijuana was observed, it was also invalid in this respect.

13. *Commonwealth v. Edmunds*, 586 A.2d 887, 889 (Pa. 1991).

14. *Id.*

15. *Id.*

16. *Id.* at 889, 890.

17. *Id.* See also *supra* note 12.

forth a time frame in which the marijuana was observed.¹⁸ A suppression hearing was then held, and it was determined that although the affidavit was facially invalid, the officer involved had prepared it in good faith and suppression was not necessary.¹⁹ The court, in reaching its decision, relied on the decision of the United States Supreme Court in *United States v. Leon*.²⁰ The Superior Court affirmed this decision, further holding that the Pennsylvania Constitution afforded no greater protection to Pennsylvania's citizens than the Fourth Amendment of the Federal Constitution.²¹ The Pennsylvania Supreme Court, however, reversed this decision, holding that when a search warrant affidavit is insufficient to establish probable cause, no "good-faith" exception will be recognized.²²

Article I, section 8 of the Pennsylvania Constitution²³ is very similar to the Fourth Amendment of the United States Constitution.²⁴ Both provide that no warrants shall be issued without probable cause.²⁵ The framers of the United States Constitution chose probable cause as "the device . . . to balance privacy rights against the state's duty to enforce the law."²⁶ The decision in *Commonwealth v. Edmunds* is in strict compliance with the Pennsylvania Constitution and demands a showing of probable cause to a detached and neutral magistrate before any warrant will issue; the penalty for failing to do so is exclusion of any evidence obtained.²⁷

United States v. Leon, however, seems to downplay the protections of the Fourth Amendment. *Leon* "substitutes a procedural for a substantive definition of probable cause; probable cause within the bounds of plain error is whatever a magistrate says it is."²⁸ Exclu-

18. *Commonwealth v. Edmunds*, 586 A.2d 887, 889-90 (Pa. 1991).

19. *Id.* at 889.

20. *Id.* at 890.

21. *Id.* at 889.

22. *Id.*

23. Pa. Const. art. I, § 8 provides:

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or thing shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

24. U.S. Const. amend. IV provides:

The 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 by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

25. PA. CONST. art. I, § 8, U.S. CONST. amend. IV.

26. See Lohruff, *supra* note 7, at 315.

27. *Commonwealth v. Edmunds*, 586 A.2d 887 (Pa. 1991).

28. Donald Dripps, *Living with Leon*, 95 YALE L.J. 906 (1986).

sion of evidence obtained with a warrant, regardless of whether or not it was issued with probable cause, will "be ordered only on a case by case basis and only in those unusual cases in which exclusion will further the purposes of the exclusionary rule."²⁹

The difference in interpretation of such similar provisions becomes more comprehensible when the exclusionary rule and its underlying purposes are viewed in a historical context. Over one hundred years ago, in *Boyd v. United States*, the United States Supreme Court first recognized the need to exclude evidence obtained in violation of the Fourth Amendment in order to preserve the integrity of individual rights.³⁰ The Court in *Boyd* recognized the importance of safeguarding both Fourth and Fifth Amendment rights and declared unconstitutional the use of any evidence seized without probable cause.³¹ This position was reiterated thirty years later in *Weeks v. United States* when the Court held that the Fourth Amendment barred the use of all evidence obtained through illegal search and seizure.³² The exclusionary rule was further expanded by the Supreme Court in decisions such as *Silverthorne Lumber v. United States* and *Gouled v. United States*.³³

However, in 1949, with its decision in *Wolf v. Colorado*, the Court changed its position by declining to impose the exclusionary rule upon the individual states.³⁴ *Wolf* allowed the states to determine for themselves whether to apply the exclusionary rule or to rely on other equally effective methods for protecting Fourth and Fifth Amendment rights.³⁵ Twelve years later, the Court acknowledged "the obvious futility of relegating the Fourth Amendment to the protection of other remedies"³⁶ and extended the rule to the states in *Mapp v. Ohio*.³⁷ Evidence seized without probable cause, either with or without a warrant, had to be suppressed on a nationwide basis

29. *United States v. Leon*, 468 U.S. 897, 918 (1984).

30. *Boyd v. United States*, 116 U.S. 616, 630 (1886). *Boyd* marked the historical beginning of the exclusionary rule. Fourth and Fifth Amendment freedoms were regarded as too precious to be compromised in any way.

31. *Id.* at 634.

32. *Weeks* held that if illegally obtained evidence could be used against an accused citizen, the provisions of the Fourth Amendment "may as well be stricken from the Constitution." *Weeks v. United States*, 232 U.S. 383, 391, 392 (1914).

33. *Silverthorne* mandated the suppression of copies of illegally seized evidence, even after the actual evidence was returned. *Silverthorne Lumber v. United States*, 251 U.S. 385 (1920). *Gouled* applied the exclusionary rule even where the defendant did not seek the return of the seized evidence. *Gouled v. United States*, 255 U.S. 298 (1921).

34. *Wolf v. Colorado*, 338 U.S. 25 (1949).

35. *Id.* at 33.

36. *Mapp v. Ohio*, 367 U.S. 643, 652 (1961).

37. *Id.*

under the *Mapp* decision.³⁸

The *Mapp* decision remained largely unchanged until the creation of the "good-faith" exception to the exclusionary rule twenty-three years later in *United States v. Leon*.³⁹ *Leon* represents the state of federal exclusionary law as it exists today: the Fourth Amendment of the Federal Constitution does not require suppression of evidence obtained with an invalid warrant if the police have acted with reasonable reliance on its supposed validity.⁴⁰

The history of the exclusionary rule in Pennsylvania prior to the *Edmunds* decision is very different from its federal counterpart. "[C]onstitutional protection against unreasonable searches and seizures existed in Pennsylvania more than a decade before the adoption of the Federal Constitution and fifteen years prior to the promulgation of the Fourth Amendment."⁴¹ The protection provided to Pennsylvania's citizens by article I, section 8 of the Pennsylvania Constitution is broad and extends to all areas where an individual has a reasonable expectation of privacy.⁴² While exceptions to the exclusionary rule have been made in the past,⁴³ more recent Pennsylvania cases apply the rule strictly.⁴⁴ The Pennsylvania Supreme Court's decision not to apply the "good-faith" exception in *Edmunds* is well rooted in the state's exclusionary rule precedent.⁴⁵

Other states that have had the opportunity to determine whether or not to apply the "good-faith" exception are almost evenly divided in their decisions. Arkansas,⁴⁶ Indiana,⁴⁷ Arizona,⁴⁸ Mis-

38. *Id.*

39. *United States v. Leon*, 468 U.S. 897 (1984).

40. *Id.* at 914.

41. *Commonwealth v. Sell*, 470 A.2d 457, 466 (Pa. 1983).

42. *Commonwealth v. DeJohn*, 403 A.2d 1283, 1289 (Pa. 1979) (holding that the admission into evidence of the defendant's canceled check, obtained pursuant to an invalid subpoena, constituted reversible error), *cert. denied*, 444 U.S. 1032 (1980).

43. *See, e.g. Commonwealth v. Brown*, 368 A.2d 626 (Pa. 1976) (holding that if the prosecution can establish that illegally obtained evidence would have been discovered anyway in the course of a lawfully conducted investigation, the exclusionary rule need not be applied); *Commonwealth v. Milliken*, 300 A.2d 78 (Pa. 1973) (allowing oral testimony by the affiant to establish a basis for probable cause in the issuance of the warrant); *Commonwealth v. Rundle*, 194 A.2d 143 (Pa. 1963) (refusing to apply the exclusionary rule extended to the states by *Mapp* in a retroactive manner).

44. *See Commonwealth v. Edmunds*, 586 A.2d 887 (Pa. 1991); *Commonwealth v. Mellilli*, 555 A.2d 1254 (Pa. 1989); *Sell*, 470 A.2d 457; *DeJohn*, 403 A.2d 1283.

45. *Edmunds*, 586 A.2d at 896.

46. *Jackson v. State*, 722 S.W.2d 831 (Ark. 1987). Drug charges were upheld in this case on the basis that the "good-faith" exception to the exclusionary rule justified a search based on a facially valid warrant issued in response to a deficient affidavit. *Id.* at 834.

47. *Mers v. State*, 482 N.E.2d 778 (Ind. Ct. App. 1985). Indiana applied the "good-faith" exception in this case to uphold a conviction of theft when officers acted in reasonable reliance on a deficient warrant. *Id.* at 786.

48. *State v. Bolt*, 689 P.2d 519 (Ariz. 1984). The Arizona court held that the "independen-

souri,⁴⁹ and Kansas⁵⁰ follow the holding in *Leon* and will not exclude evidence obtained pursuant to a warrant issued in good faith. However, New York,⁵¹ Michigan,⁵² North Carolina,⁵³ Connecticut,⁵⁴ and New Jersey⁵⁵ adhere to the more rigid, traditional interpretation of the exclusionary rule. None of these decisions reflect a blind following of the Supreme Court's decision. Instead, like *Edmunds*, they demonstrate an in-depth analysis of both state and federal constitutional law. More and more state courts are taking seriously "their obligations as coequal guardians of civil rights and liberties."⁵⁶

Another reason for the contrasting views of the United States Supreme Court and the Pennsylvania Supreme Court with regard to the exclusionary rule is the difference in perception of the underlying purposes of the rule. Under the federal interpretation, the sole purpose of the exclusionary rule is to deter future unlawful police conduct.⁵⁷ It is viewed simply as a judicial remedy⁵⁸ to be applied or withheld at the court's discretion.

Pennsylvania, on the other hand, takes a more liberal view of the underlying meaning of the exclusionary rule. Its purpose is not merely to deter unreasonable police conduct, but also to "redress the injury to the privacy of the search victim."⁵⁹ The right to be free

dent source doctrine" under the exclusionary rule of the Arizona Constitution would be applied to prevent the exclusion of evidence obtained during the illegal "securing" of defendant's home. The "independent source doctrine" maintains that if the search warrant was based on a source not dependent on the illegal actions of "securing" the premises, exclusion was not necessary. *Id.* at 527.

49. *State v. Brown*, 708 S.W.2d 140 (Mo. 1986). Missouri's judicially created exclusionary rule was modified to allow for the "good-faith" exception of *Leon*. *Id.* at 147.

50. *State v. Huber*, 704 P.2d 1004 (Kan. Ct. App. 1985). This decision declared that the scope of section 15 of the Bill of Rights of the Kansas Constitution was identical to the Fourth Amendment of the Federal Constitution and therefore implicitly adopted the "good-faith" exception of *Leon*. *Id.* at 1011.

51. *People v. Bigelow*, 488 N.E.2d 451 (N.Y. 1985). The New York Constitution was held to afford greater protection to New York citizens than the Federal Constitution. No exception to the exclusionary rule was recognized. *Id.* at 458.

52. *People v. Sundling*, 395 N.W.2d 308 (Mich. Ct. App. 1986) (specifically declining to follow *Leon*).

53. *State v. Carter*, 370 S.E.2d 553 (N.C. 1988). The court in this case declined to apply the "good-faith" exception to admit a blood sample into evidence that had been taken without a warrant. *Id.* at 562.

54. *State v. Marsala*, 579 A.2d 58 (Conn. 1990). (Defendant's drug conviction was reversed when the Connecticut Supreme Court held the "good-faith" exception to be incompatible with the state's constitutional provision prohibiting unreasonable searches and seizures.).

55. *State v. Novembrino*, 519 A.2d 820 (N.J. 1987).

56. William J. Brennan, Jr., *The Bill of Rights and the States: The Revival of State Constitutions as Guardians of Individual Rights*, 61 N.Y.U. L. REV. 535 (1986).

57. Donald Dripps, *Living with Leon*, 95 YALE L.J. 906 (1986) (citing *United States v. Calandra*, 414 U.S. 338 (1974)).

58. *United States v. Leon*, 468 U.S. 897 (1984).

59. Paul Reiding, *States' Rights: Courts Push Beyond U.S. Constitution*, 77 A.B.A. J.

from unreasonable searches and seizures, contained in Article 1, section 8 of the Pennsylvania Constitution, is tied to the implicit right to privacy in Pennsylvania.⁶⁰ The Supreme Court's decision in *Commonwealth v. Edmunds* flows naturally from this interpretation of the purposes of the exclusionary rule.

The decision in *Edmunds* reflects a deep-rooted tradition of respect for individual privacy rights in Pennsylvania. While the failure to apply the "good-faith" exception may in some cases allow guilty defendants to go free,⁶¹ it also, and more importantly, preserves the integrity of the constitutional right to be free from unreasonable searches and seizures. At a time when more and more individual liberties are being curtailed on a federal level, state courts are returning to their own constitutions to deal with issues that have been left to the United States Supreme Court for forty years.⁶² State courts must continue to interpret their own laws on a separate basis from federal law in order to guarantee the full realization of personal liberties throughout this country.⁶³

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60. *Commonwealth v. DeJohn*, 403 A.2d 1283, 1291 (Pa. 1979), *cert. denied*, 444 U.S. 1032 (1980).

61. Craig D. Uchida et al., *Acting In Good Faith: The Effects of United States v. Leon on the Police and Courts*, 30 ARIZ. L. REV. 467 (1988). This article summarizes the results of a study identifying the effects of the *Leon* decision on police practices and prosecutorial and judicial conduct. Overall, the effects of the decision on the search warrant process have been minimal. *Id.* at 491.

62. Hans A. Linde, *E Pluribus — Constitutional Theory and State Courts*, 18 GA. L. REV. 165 (1984).

63. Brennan, *supra* note 6, at 491.

