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CASENOTES

Arizona v. Evans: Carving Out Another Good-Faith Exception to the Exclusionary Rule

In *Arizona v. Evans*,[1] the United States Supreme Court considered whether the exclusionary rule requires suppression of evidence seized incident to an arrest, when the arrest resulted from inaccurate computer data created by court personnel.[2] In January 1991, police arrested Isaac Evans during a routine traffic stop because the patrol car's computer indicated he was the subject of an outstanding misdemeanor warrant.[3] While being handcuffed, Evans dropped a marijuana cigarette.[4] A subsequent search of the vehicle revealed a bag of marijuana hidden under the passenger seat, and Evans was charged with possession.[5] Upon notifying the justice court of the arrest, the officers discovered the misdemeanor warrant had been quashed seventeen days earlier.[6] Evans moved to suppress the evidence, alleging the seizure resulted from an illegal search incident to an unlawful

1. 115 S. Ct. 1185 (1995).
2. *Id.* at 1187-88.
3. *Id.* at 1188.
4. *Id.*
5. *Id.*
6. *Id.*

arrest.[7] Evans further contended that, under *United States v. Leon*,[8] the good-faith exception to the exclusionary rule did not apply.[9] The arrest, Evans alleged, was not caused by judicial error, but by police error.[10] The trial court granted the motion to suppress, finding the State was at fault for failing to quash the warrant.[11] The court made no factual finding as to whether the sheriff's office or the justice court was responsible for the error.[12] Instead, the court found no "'distinction between State action, whether it happens to be the police department or not.'"[13] The Arizona Court of Appeals reversed the trial court's ruling.[14] According to the court of appeals, the exclusionary rule was not intended to deter errors by justice court employees or sheriff's office employees who were not directly associated with the arresting officers or their police department.[15] The court reasoned that the computer clerical error was outside the control of the arresting officers' police department.[16] Therefore, the threat of exclusion would not deter the justice court employees or sheriff's office employees from making similar mistakes in the future.[17] The Arizona Supreme Court rejected the distinction between clerical errors committed by law enforcement personnel and similar errors committed by court employees and therefore reversed.[18] The court found that regardless of who erred, the exclusionary rule was "useful" and "proper" when negligent recordkeeping resulted in an unlawful arrest.[19] The United States Supreme Court

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7. *Id.*

8. 468 U.S. 897 (1984) (holding the good-faith exception applies when a judicial officer erred in issuing a search warrant upon which police objectively and reasonably acted).

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

10. *Id.* Evans also argued that regardless of who erred, whether a court clerk or sheriff's clerk, exclusion was appropriate because it would further the purpose for which the exclusionary rule was designed; it would encourage employees to take more care in making sure quashed warrants were removed from their records. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* (quoting State v. Evans, No. CR-91-00513, at 5 (Ariz. Superior Ct., Maricopa County 1992)).

14. State v. Evans, 836 P.2d 1024, 1028 (Ariz. Ct. App. 1992), *vacated*, 866 P.2d 869 (Ariz. 1994), *rev'd sub nom.* Arizona v. Evans, 115 S. Ct. 1185 (1995).

15. 836 P.2d at 1027.

16. *Id.*

17. *Id.*

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

19. 866 P.2d at 872. The Arizona Supreme Court stated, "it is repugnant to the principles of a free society that a person should ever be taken into police custody because of a computer error precipitated by government carelessness." *Id.* at 871. It reasoned that the exclusionary rule would "hopefully serve to improve the efficacy of those who keep

granted certiorari and reversed the Arizona Supreme Court.[20] The Court held the exclusionary rule does not require suppression of evidence when police relied in good-faith upon misinformation caused by computer clerical error.[21]

The exclusionary rule was first applied to federal criminal proceedings in 1914.[22] In *Weeks v. United States*,[23] the Court held the Fourth Amendment barred illegally obtained evidence from being admitted against defendants.[24] The Court explained that by admitting illegally obtained evidence, courts would be permitting conduct that violated the Constitution.[25] Thus, through exclusion, the Court furthered the promotion of judicial integrity.[26] Following *Weeks*, the Court in *Mapp v. Ohio*[27] held the exclusionary rule was a mandatory remedy for Fourth Amendment violations in state proceedings as well.[28] The Court based its holding upon the constitutional foundation established in *Wolf v. Colorado*.[29] In *Wolf*, the Court held the Fourth Amendment's right of privacy extended to the states via the Fourteenth Amendment.[30] The Court in *Mapp* found it "logically and constitutionally necessary" that the exclusionary rule also apply to the states through the Due Process Clause of the Fourteenth Amendment because it was "an

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records in our criminal justice system." *Id.* at 872.

20. Arizona v. Evans, 115 S. Ct. at 1189, 1194.

21. *Id.* at 1194. The Court refused to accept the Arizona Supreme Court's conclusion that "'even assuming . . . that responsibility for the error rested with the justice court, it [did] not follow that the exclusionary rule should be inapplicable to these facts.'" *Id.* at 1193 (quoting *Evans*, 866 P.2d at 871). Yet, the Court explicitly declined to answer the question of "whether evidence should be suppressed if police personnel were responsible for the error." *Id.* at 1194 n.5.

22. Weeks v. United States, 232 U.S. 383 (1914).

23. *Id.* at 383.

24. *Id.* at 398.

25. *Id.* at 394.

26. *Id.* at 392. The Court wrote:

> The tendency of those who execute the criminal laws of the country to obtain conviction by means of unlawful seizures . . . should find no sanction in the judgments of the courts, which are charged . . . with the support of the Constitution, and to which people of all conditions have a right to appeal for the maintenance of such fundamental rights.

Id.

27. 367 U.S. 643 (1961).

28. *Id.* at 660.

29. *See id.* at 650-57 (re-examining Wolf v. Colorado, 338 U.S. 25 (1949), *overruled in part by* Mapp v. Ohio, 367 U.S. 643 (1961)).

30. Wolf v. Colorado, 338 U.S. 25, 27-28 (1949), *overruled in part by* Mapp v. Ohio, 367 U.S. 643 (1961).

essential part of the right to privacy."[31] The Court not only recognized the rule as an implicit constitutional privilege, but reiterated the judicial integrity rationale of *Weeks*.[32] The Court cited the deterrence of police misconduct as a third rationale for the rule.[33] The Court reasoned that exclusion would compel police officers to respect Fourth Amendment guarantees.[34] In subsequent decisions, the Court rejected all but the police deterrence rationale of *Weeks* and *Mapp*.[35] The exclusionary rule was also narrowed by the adoption of numerous good-faith exceptions. For example, in *United States v. Leon*,[36] the Court held the exclusionary rule did not apply to good-faith seizures of evidence even if the search warrant was later found unsupported by probable cause.[37] The Court limited its analysis to three factors: (1) whether the application of the exclusionary rule will deter police misconduct; (2) whether evidence indicates that those responsible for the error are "inclined to ignore or subvert the Fourth Amendment or that lawlessness among these actors requires . . . the extreme sanction;"[38] and (3) whether excluding evidence will have a significant deterrent effect on those responsible for the error.[39] First, the Court concluded the rule's application to judicial errors would not deter police misconduct.[40] It reasoned that police were not normally expected to second-guess judicial officers' decisions.[41] "[O]nce the warrant issues, there is literally

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31. 367 U.S. at 656. The Court reasoned:

> [I]n extending the substantive protections of due process to all constitutionally unreasonable searches—state or federal—it was logically and constitutionally necessary that the exclusion doctrine—an essential part of the right to privacy—be also insisted upon as an essential ingredient of the right newly recognized by the *Wolf* case.

Id. at 655-56.

32. *Id.* at 656, 660.

33. *Id.* at 656.

34. Mapp v. Ohio, 367 U.S. 643, 656 (1961) (quoting Elkins v. United States, 364 U.S. 206, 217 (1960)).

35. *See* Stone v. Powell, 428 U.S. 465, 485, 486 (1976) (explicitly limiting the rationale for the exclusionary rule's application to the deterrence of unlawful police conduct while rejecting any notion that the rule acted as a personal constitutional right of an aggrieved party); *see also* United States v. Calandra, 414 U.S. 338, 347, 355 (1974). The Court stated that the exclusionary rule was a judicially created remedy aimed at deterring police misconduct, not a personal constitutional right of an accused. *Id.* at 347. It also expressly rejected the dissent's concern that the Court's decision would betray the imperative of judicial integrity and sanction illegal government conduct. *Id.* at 355.

36. 468 U.S. 897 (1984).

37. *Id.* at 900.

38. *Id.* at 916.

39. *Id.*

40. *Id.* at 919-21.

41. United States v. Leon, 468 U.S. 897, 921 (1984).

nothing more the policeman can do in seeking to comply with the law."[42] Second, the Court found no evidence indicating judicial officers were inclined to subvert or disregard the Fourth Amendment.[43] Third, and most importantly, the Court concluded that the threat of exclusion could not significantly deter judicial officers' errors.[44] The Court reasoned that judges and magistrates were not law enforcement team adjuncts but were neutral parties.[45] Accordingly, they had no stake in the outcome of particular criminal prosecutions.[46] The Court further emphasized that exclusion would not "necessarily meaningfully inform judicial officers of their errors."[47] Instead, the existing district court supervision and the threat of removal for misconduct or incompetency, for example, provided a more effective remedy.[48] Three years later, the Court used its *Leon* analysis in *Illinois v. Krull*[49] to expand the good-faith exception.[50] The Court held that the exception applied when an officer objectively and reasonably relied upon a statute authorizing a warrantless search even though the statute was ultimately declared unconstitutional.[51]

In *Arizona v. Evans*, decided eight years after *Krull*, the Court again addressed the question of whether to carve out a new good-faith

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42. *Id.* (quoting Stone v. Powell, 428 U.S. 465, 498 (1976) (Burger, J., concurring) (brackets in original)).

43. *Id.* at 916.

44. *Id.* at 916-17.

45. *Id.* at 917.

46. *Id.*

47. *Id.* The Court also stated, "admitting evidence obtained pursuant to a warrant while at the same time declaring . . . the warrant defective . . . [would not] in any way reduce judicial officers' professional incentives to comply with the Fourth Amendment, encourage them to repeat their mistakes, or lead to the granting of all colorable warrant requests." *Id.*

48. *Id.* at 917 n.18.

49. 480 U.S. 340 (1987).

50. *Id.* First, the Court found that the rule's application would have little deterrent effect on police officers' actions. *Id.* Second, the Court concluded that no evidence suggested legislators were engaged in lawlessness enough to require exclusion. *Id.* at 351. Although legislators were not neutral judicial officers like judges or magistrates, they were not law enforcement officers either. *Id.* at 350-51. Rather, like judicial officers, legislators were not "'engaged in the often competitive enterprise of ferreting out crime.'" *Id.* at 351 (quoting Johnson v. United States, 333 U.S. 10, 14 (1948)). Third, the Court reasoned that legislators enacted statutes for broad pragmatic purposes. *Id.* at 352. In turn, the greatest deterrent to a legislature's enactment of unconstitutional statutes remained the judicial power of the courts to invalidate the statutes because invalidation would subsequently: (1) inform the legislature of its error; (2) affect the admissibility of all the evidence seized after the constitutional ruling; and (3) often result in the enactment of a modified version of the statute that was constitutional. *Id.*

51. *Id.* at 349-51.

exception to the exclusionary rule. After applying the analysis in *Leon*, the Court answered in the affirmative.[52] First, the Court concluded that the rule's application to court employee clerical errors would not alter police officers' behavior.[53] It quoted the trial court: "'I think the police officer [was] bound to arrest. I think he would [have been] derelict in his duty if he failed to arrest.'"[54] Second, the Court found no evidence suggesting that court personnel were engaged in lawlessness or were inclined to subvert or disregard the Fourth Amendment.[55] In fact, the Court pointed to contrary evidence. It emphasized the Chief Clerk's testimony that the type of error affecting Evans rarely occurred.[56] Third, the Court reasoned court personnel would not be significantly deterred from error by the threat of exclusion.[57] Court employees were not law enforcement team adjuncts.[58] They were not "engaged in the competitive enterprise of ferreting out crime"[59] and thus had no stake in the outcome of particular criminal prosecutions.[60] Because the police officers could have objectively and reasonably relied upon the erroneous computer records, the Court concluded that the application of *Leon* supported an exception to the exclusionary rule.[61] Hence, the Court carved out another good-faith exception to the exclusionary rule.

The implications of *Arizona v. Evans*[62] for future Fourth Amendment controversies may prove more far reaching than expected. If read broadly, *Evans* suggests that the good-faith exception could be expanded

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52. Arizona v. Evans, 115 S. Ct. at 1194.

53. *Id.* at 1193. Before applying the *Leon* analysis, the Court noted that the question of whether an individual's Fourth Amendment rights were violated had, for a long time, been regarded as completely separate from the question of whether exclusion was appropriate. *Id.* at 1191 (citing Illinois v. Gates, 462 U.S. 213, 223 (1982)). The Court continued, stating that the exclusionary rule was a judicially created remedy which, through its general deterrent effect, was designed to safeguard against future Fourth Amendment violations. *Id.* (citing United States v. Leon, 468 U.S. at 906). The Court further pointed out that exclusion had been limited only to cases where the remedial objectives were determined to be served in the most effectual manner. *Id.*

54. *Id.* (quoting State v. Evans, No. CR-91-00513, at 51 (Ariz. Superior Ct., Maricopa County 1992) (brackets in original)).

55. *Id.*

56. *Id.* at 1193-94.

57. *Id.* at 1193.

58. *Id.*

59. *Id.* (citing Johnson v. United States, 333 U.S. 10, 14 (1948)).

60. *Id.*

61. *Id.* at 1194.

62. *Id.*

to apply to circumstances in which no warrant or statute ever existed.[63] Before applying the exception, the Court in *Leon* expressed a strong preference for a warrant.[64] It found that an independent and impartial magistrate provides a "more reliable safeguard against improper searches than the hurried judgment of a law enforcement officer."[65] Thus, the Court stated, "'in a doubtful or marginal case a search under a warrant may be sustainable where without one it would fall.'"[66] A statute may likewise be preferred by the Court before applying the good-faith exception. Legislators, who take an oath to protect the Constitution, may provide a more reliable safeguard than the hurried judgment of police officers. However, in *Evans*, police did not act either on the basis of a statute that was ultimately found unconstitutional, nor on the basis of a warrant later invalidated for lack of probable cause.[67] When police arrested Evans, the misdemeanor warrant was nonexistent. The independent and impartial magistrate did not safeguard Evans' rights because the magistrate's decision to quash the warrant was never communicated to the police.[68] Yet, the Court still applied the good-faith exception. Additionally, in the wake of *Evans*, future Fourth Amendment violations are virtually guaranteed to multiply in number. In both *Leon* and *Krull*, the Court specifically noted that more effective alternative safeguards were already in existence. In *Leon*, the Court pointed to district court supervision and the threat of removal for misconduct or incompetency.[69] The Court in *Krull* emphasized the judicial power to invalidate unconstitutional statutes.[70] The Court's analysis in *Evans*, however, was devoid of any such discussion. Instead, the Court relied upon the chief clerk's testimony that the type of error

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63. *Cf.* 115 S. Ct. at 1196 (Stevens, J., dissenting) (stating, "The reasoning in *Leon* assumed the existence of a warrant; it was, and remains, wholly inapplicable to warrantless searches and seizures" (footnote ommitted)); State v. Evans, 866 P.2d 869, 971 (Ariz. 1994) (rejecting extension of *Leon's* good-faith exception to searches based upon a nonexistent warrant), *rev'd sub nom.* Arizona v. Evans, 115 S. Ct. 1185 (1995).

64. 468 U.S. 897, 914 (1984).

65. *Id.* at 913-14.

66. *Id.* at 914 (quoting United States v. Ventresca, 380 U.S. 102, 106 (1965)).

67. *Evans,* 115 S. Ct. at 1194.

68. Major Masterton, *A New Expansion of the Good-Faith Exception:* Arizona v. Evans, 1995-JUL ARMY LAW. 56, 57. Masterton notes:

> Arguably, the original decision by a justice of the peace to issue an arrest warrant provided the accused an adequate safeguard. However, the Supreme Court did not focus on this original warrant. Instead, the Court focused on who was responsible for the failure to communicate that the warrant had been quashed.

Id. at 58 n.98.

69. *See supra* note 47 and accompanying text.

70. *See supra* note 49.

concerning Evans occurred only once in three or four years.[71] At the same time, the Court ignored testimony to the contrary. The witness also recounted that when the mistake came to light, a subsequent records check revealed three other mistakes had been made on the very same day.[72] As governmental reliance upon computer technology increases, the number of databases containing similar inaccuracies will multiply. As a result of *Evans*, these inaccuracies "now will inure to the benefit of the police"[73] and to the detriment of civil liberties. Absent the threat of exclusion, effective incentives to safeguard against negligent maintenance of computerized records no longer exist.[74] Negligent maintenance may even be encouraged. Careless record keeping provides law enforcement officers broader authority to conduct unlawful searches and arrests.[75] It is unclear "how far, in dealing with fruits of computerized error, [the Court's] very concept of deterrence by exclusion of evidence [will] extend . . . on [grounds] that there would otherwise be no reasonable expectation of keeping the number of resulting false arrests within an acceptable minimum limit."[76] For the most part, *Evans* leaves this issue unanswered. However, *Evans* suggests the Court would apply the exclusionary rule to future computer errors after determining arresting officers acted unreasonably in relying upon the record keeping system itself.[77] Unfortunately, just how many Fourth Amendment violations will have to occur before a system is deemed unreliable remains unknown. *Arizona v. Evans* by no means eradicates the exclusionary rule. Instead, it leaves many pondering how much of the rule's foundation and structure, first established in *Weeks* and *Mapp*, still remains. Justices Stevens and Ginsburg expressed such

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71. *Evans*, 115 S. Ct. at 1200 (Ginsburg, J., dissenting).

72. *Id.*

73. Ira Mickenberg, *Court Settles on Narrower View of the Fourth Amendment*, NAT'L L.J., July 31, 1995, at C8.

74. *Id.* "Under *Evans*, a police officer who reasonably relies on computer information is immune from civil liability from any constitutional violation that may result." *Id. See also* John R. Williams, *Representing Plaintiffs in Civil Rights Litigation Under Section 1983*, 530 PRAC. L. INST./LITIG. 29 (1995). Williams cites *Evans* as a reason for courts to be more generous in imposing civil liability under Section 1983 stating, "What other restraint will there be[,] . . . [o]r should computers be above the law?" *Id.*

75. *Id.*

76. *Evans*, 115 S. Ct. at 1195 (Souter, J., concurring) (declining to answer the question).

77. *See id.* at 1194 (stating, "There is no indication that the arresting officer was not acting objectively reasonably when he relied upon the police computer record"); *see also id.* (O'Conner, J., concurring) (explaining that it would not be reasonable for police to rely upon a computer system that has no mechanism to ensure its accuracy over time and that routinely leads to false arrests).

concerns in their dissents.[78] Even Justices O'Conner, Souter, and Breyer in their concurrences were poignantly clear that they supported only a "narrow"[79] or "limit[ed]"[80] reading of the Court's opinion. Still, with every new decision striking down an exclusionary rule's rationale or carving out a new exception, the Court's distaste for the rule becomes more apparent.[81] Some commentators argue that when "[f]aced with a severe societal problem [such as] crime, the [Court has] allowed outcomes rather than jurisprudential principles and cogent analysis to guide [its] decision making."[82] As violent crime plagues even the most provincial parts of the country, the Court's direction reflects much of today's public opinion. Citizens are lobbying for more prisons and tougher sentences. Law enforcement officers are expressing frustration with "the system." Congress is scrambling to pass legislation to create a statutory good-faith exception.[83] Yet today's society, "in attempting to fight crime so that innocent citizens can feel free to pursue happiness, may unwittingly be creating a world where no citizen has the unintruded upon liberty that the drafters of our Constitution surely envisioned."[84]

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78. Justice Stevens stated, "The offense to the dignity of the citizen who is arrested, handcuffed, and searched on a public street simply because some bureaucrat has failed to maintain an accurate computer data base strikes me as . . . outrageous." *Id.* at 1197 (Stevens, J., dissenting). "Even when the error leads to the discovery of a crime, the cost of exclusion must still be weighed against the interest in protecting innocent citizens from unwarranted indignity." *Id.* Stevens concluded, "the cost is amply offset by an appropriately 'jealous regard for maintaining the integrity of individual rights.'" *Id.* (quoting Mapp v. Ohio, 367 U.S. 643, 647 (1961)). Justice Ginsburg, with whom Justice Stevens joined, explained, "this Court should select a jurisdictional presumption that encourages States to explore different means to secure respect for individual rights in modern times." *Id.* at 1200-01 (Ginsberg, J., dissenting).

79. *Id.* at 1195 (Souter, J., concurring).

80. *Id.* at 1194 (O'Conner, J., concurring).

81. Christine M. D'Elia, Comment, *The Exclusionary Rule: Who Does it Punish?*, 5 SETON HALL CONST. L.J. 563, 607 (1995).

82. Michelle R. Ghetti, *Seizure Through the Looking Glass: Constitutional Analysis in Alice's Wonderland*, 22 S.U. L. REV. 231, 232 (1995) (footnote omitted).

83. *See* Exclusionary Rule Limitation Act of 1995, 141 Cong. Rec. S173-01, S278.

84. Ghetti, *supra* note 82, at 232 (emphasis omitted).