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# *United States v. Williams*: The Good Faith Exception to the Exclusionary Rule

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# United States v. Williams: The Good Faith Exception to the Exclusionary Rule

In an opinion with two alternative holdings, the Fifth Circuit Court of Appeals decided en banc *United States v. Williams*[1] on July 31, 1980. The court first held that, because Ms. Williams' arrest was legal, the incriminating evidence found as a result of the search incident to arrest could be used against her at trial.[2] Alternatively, the court ruled that evidence should not be excluded when it is discovered by officers acting in good faith despite the fact that they are mistaken in thinking that their actions are lawful.[3] This note focuses on the second holding that purports to establish a good faith exception to the exclusionary rule.

Jo Ann Williams, the defendant, was arrested twice for transporting drugs illegally. The same Special Agent of the Drug Enforcement Administration arrested the defendant in Ohio and later in Atlanta. She appealed the conviction resulting from the first arrest and was released on bond pending the appeal. The agent knew that a condition of her bond was that she not leave Ohio, and the agent therefore arrested her when he saw her deplane in Atlanta from a nonstop flight from California. The search incident to the arrest revealed heroin in her purse, and a later search pursuant to a warrant yielded large quantities of heroin in her luggage.[4]

In a pretrial motion at the district court, Ms. Williams contended successfully that, because the violation of a condition of bond did not constitute a criminal offense, the warrantless arrest was improper and consequently the search incident to the arrest must be illegal. Therefore, the court excluded from evidence the fruit of that search. The panel of the Fifth Circuit Court of Appeals upheld the district court, though Judge Clark dissented and urged that the exclusionary rule should not apply in this case. The en banc hearing resulted from this division of opinion.[5]

In order to examine fully the exception to the exclusionary rule outlined in *Williams*, it is helpful to review the development of the rule by the Supreme Court. A unanimous court formulated the exclusionary rule

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1. 622 F.2d 830 (5th Cir. 1980).
2. *Id.* at 839.
3. *Id.* at 840.
4. *Id.* at 833-35.
5. *Id.* at 840.

in *Weeks v. United States*,[6] in which the Court held evidence obtained by an illegal seizure was to be excluded from trials in federal courts. There were two basic reasons for the Court's ruling. First, the Court thought that the federal judiciary had no business sanctioning illegal conduct, which it would do implicitly by admitting that type of evidence. In addition, the Court reasoned that, unless the illegally obtained contraband was excluded from evidence at trial, there would be no value to the protections of the fourth amendment.[7] In 1949, in *Wolf v. Colorado*,[8] the Court incorporated the fourth amendment into the fourteenth but declined to extend the exclusionary rule to the states. Twelve years later, however, in *Mapp v. Ohio*,[9] a majority of the Court did find that the exclusionary rule applied to the states. As a result, in neither federal nor state criminal trials could evidence be introduced that was seized in violation of fourth amendment prohibitions. The Court found the rule propounded in *Weeks* and *Mapp* to be rooted in the Constitution.[10] "Mr. Justice Clark's essential position in *Mapp* was that the exclusionary rule is part of the Fourth Amendment, the Fourth Amendment is part of the Fourteenth; therefore the exclusionary rule is part of the Fourteenth."[11] Among the reasons given for extending the rule was the ineffectiveness of alternative remedies for violation of fourth amendment protections.[12] The Court, however, specifically highlighted the ideas that the rule was necessary to maintain "judicial integrity"[13] and that there may be found in it some means to deter officials from disregarding the fourth amendment.[14]

Once the rule was adopted, courts in applying it began to emphasize the deterrence of official lawlessness, rather than judicial integrity, as the basic rationale for the rule.[15] As Justice Burger stated in an article written in 1964: "At times, confusing and even contradictory rationales have been put forward. But despite this groping, the Court now appears to have settled upon the need for deterrence of police violations as the principal reason for suppression."[16] With the emphasis on deterrence came a concomitant deemphasis or denial of the exclusionary rule as a constitu-

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6. 232 U.S. 383 (1914).
7. *Id.* at 393. *See also* Lumber Co. v. United States, 251 U.S. 385, 392 (1920).
8. 338 U.S. 25 (1949).
9. 367 U.S. 643 (1961).
10. *Id.* at 649.
11. Allen, *Federalism and the Fourth Amendment: A Requiem for Wolf*, 1961 SUP. CT. REV. 1, 26.
12. 367 U.S. at 651-52, 670.
13. *Id.* at 659.
14. *Id.* at 656.
15. *See, e.g.*, Michigan v. De Fillippo, 443 U.S. 31 (1979); Stone v. Powell, 428 U.S. 465 (1976); United States v. Calandra, 414 U.S. 338, 347 (1974).
16. Burger, *Who Will Watch the Watchman?*, 14-15 AM. U. L. REV. 1, 10 (1964).

tional rule.[17] As a result of the Court's tendency to focus on deterrence, exceptions to the exclusionary rule were developed for situations in which application of the rule could not clearly effect deterrence of illegal official conduct, or when the deterrence was thought to be marginal.

One major exception to the rule is that a defendant convicted in state court who has had the opportunity for full and fair litigation of a fourth amendment claim is denied the right to demand habeas corpus relief on the ground that illegally seized evidence was introduced at his trial.[18] The Court's theory was that the opportunity for complete litigation of the claim was protected by the safeguards of the original trial and that exclusion of the evidence on appeal would not tend further to deter illegal police conduct. Another consideration was the high costs to society both as a result of habeas review and from use of the exclusionary rule. According to the Court, when evidence is excluded, the truth finding process, the ultimate purpose of the trial, is hampered and the guilty often go free.[19]

Another exception concerned grand jury proceedings. In *United States v. Calandra*,[20] it was not an error to admit illegally seized evidence at the grand jury stage even though it was later excluded at trial.

> As with any remedial device, the application of the rule has been restricted to those areas where its remedial objectives are thought most efficaciously served. . . . [T]he need for deterrence and hence the rationale for excluding the evidence was strongest where the Government's unlawful conduct would result in imposition of a criminal sanction on the victim of the search.[21]

In the Court's opinion, the deterrent effect to be gained from applying the exclusionary rule to grand jury proceedings was "uncertain at best."[22] It further reasoned that it would be unlikely that a prosecutor would use illegally seized evidence to secure an indictment knowing that he would be unable to use it to get a conviction at trial. For this reason, the Court thought that the harm to the defendant would be negated substantially, even though the evidence was allowed in the grand jury hearing.[23]

Suppression of evidence has been limited in civil trials when the same incident is the subject of both criminal and civil actions.[24] Evidence that

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17. Stone v. Powell, 428 U.S. 465, 482 (1976); United States v. Calandra, 414 U.S. 338, 348 (1974); 622 F.2d at 841-45.

18. 428 U.S. 465 (1976).

19. *Id.* at 490.

20. 414 U.S. 338 (1974).

21. *Id.* at 348.

22. *Id.* at 351.

23. *Id.* The Court also expressed concern for the integrity of the grand jury process and the necessity of the grand jury's expeditiously discharging its duties. *Id.* at 349-50.

24. United States v. Janis, 428 U.S. 433 (1976). The Supreme Court has also refused to

would be excluded from a criminal trial may be admitted in a civil trial. The Court, in *United States v. Janis*,[25] indicated that the additional deterrent effect of excluding evidence from a civil suit was minimal, and therefore, the Court refused to suppress the evidence.

Emphasizing the importance of the truth finding process, the Court has also applied the exclusionary rule with greater reluctance to live witness testimony than to physical evidence.[26] Thus, a witness discovered through an illegal search and seizure was allowed to testify at trial. This exception is not all encompassing, but is limited by considerations of how and when the witness was discovered and the intentions of the officer at the time of the search.

The Court developed another important exception to the exclusionary rule by admitting evidence, which was excluded from the prosecution's case in chief, to impeach the defendant's testimony.[27] With this exception, the Court reiterated its belief that the fact finding process is the ultimate purpose of a criminal trial and must be preserved at all cost. The defendant's fourth amendment protections, by implication, are of lesser importance and are satisfied by excluding the illegally seized evidence from the state's case in chief.[28] The effect of this rule is that a defendant will often be reluctant to take the stand in his own behalf when he has been successful in excluding evidence seized in violation of the fourth amendment.

Refusing to apply the exclusionary rule retroactively is another way in which the Court has limited its applicability. When evidence was seized in good faith reliance on an ordinance thought to be constitutional, but later declared unconstitutional, it was properly admitted.[29] The Court cautioned, however, that evidence would be suppressed if the seizure were based on a law "so grossly and flagrantly unconstitutional that any person of reasonable prudence would be bound to see its flaws."[30] In another instance, evidence seized under a statute allowing warrantless border

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invoke the exclusionary rule when, in violation of Internal Revenue Service regulations, an IRS agent recorded conversations with one who attempted to bribe him. United States v. Caceres, 440 U.S. 741 (1979).

25. 428 U.S. at 454.

26. United States v. Ceccolini, 435 U.S. 268 (1978).

27. Harris v. New York, 401 U.S. 222 (1971); Walder v. United States, 347 U.S. 62 (1954).

28. Critics have readily pointed out that this exception negates the effect of exclusion from the case in chief, because the evidence will have its effect on the jury no matter how it is introduced and no matter how the judge tries to limit its effect. *See, e.g.* Bain and Kelly, *Fruit of the Poisonous Tree: Recent Developments as Viewed Through Its Exceptions*, 31 U. OF MIAMI L. REV. 615, 639 (1977).

29. Michigan v. De Fillippo, 443 U.S. 31 (1979).

30. *Id.* at 38.

searches was admitted even though the statute had been declared invalid after the defendant's arrest, but prior to his trial. The Court refused to apply the subsequent decision retroactively to exclude the evidence, reasoning that deterrence could not be accomplished in this way.[31]

These various exceptions to the exclusionary rule provided the court in *Williams* the foundation upon which to build yet another exception. In *Williams,* sixteen of twenty-four judges concurred in the first opinion[32] holding that the arrest of Ms. Williams was legal, the search was valid, and the evidence resulting from that search was not to be suppressed. Thirteen judges concurred in the alternative holding creating the good faith exception to the exclusionary rule.[33] There was a special concurrence agreeing with the result by two judges[34] and another special concurrence joined by ten of the judges[35] who found the alternative holding superfluous and ill advised.

The alternative holding in part two of the opinion is "that evidence is not to be suppressed under the exclusionary rule where it is discovered by officers in the course of actions that are taken in good faith and in the reasonable, though mistaken, belief that they are authorized."[36] It is based on the rationale that the exclusionary rule exists as a deterrent to "wilful" or "flagrant" and not "good faith" and "reasonable" actions by the police.[37] The explanation is that deterrence is possible only if the seizing officer's actions are deliberate, because one cannot be deterred from conduct that he believes to be permissible.

Judges Gee and Vance, the authors of part two of the opinion, cited judicial opinions[38] and articles[39] that were critical of the exclusionary rule. Recent court decisions[40] limiting the exclusionary rule were high-

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31. United States v. Peltier, 422 U.S. 531 (1975).

32. 622 F.2d at 833.

33. *Id.* at 840.

34. *Id.* at 847.

35. *Id.* at 848.

36. *Id.* at 840.

37. *Id.*

38. Stone v. Powell, 428 U.S. 465, 538 (1976) (White, J., dissenting); Brown v. Illinois, 422 U.S. 590, 610-12 (1975) (Powell, J., concurring); Bivins v. Six Unknown Agents, 403 U.S. 388, 421 (1971) (Burger, C.J., dissenting).

39. H. FRIENDLY, BENCHMARKS 260-62 (1967). Ball, *Good Faith and the Fourth Amendment: The "Reasonable" Exception to the Exclusionary Rule,* 69 J. CRIM. L. & CRIMINOLOGY 635 (1978); Wright, *Must the Criminal Go Free If the Constable Blunders?,* 50 TEX. L. REV. 736, 740 (1972).

40. Michigan v. De Fillippo, 443 U.S. 31 (1979); United States v. Caceres, 440 U.S. 741 (1979); Rakas v. Illinois, 439 U.S. 128 (1978); United States v. Ceccolini, 435 U.S. 268 (1978); Stone v. Powell, 428 U.S. 465 (1976); United States v. Janis, 428 U.S. 433 (1976); United States v. Peltier, 422 U.S. 531 (1975); Michigan v. Tucker, 417 U.S. 433 (1974); United States v. Calandra, 414 U.S. 338 (1974); Harris v. New York, 401 U.S. 222 (1971).

lighted, as well as the fact that four of the nine present Supreme Court Justices have suggested limiting the exclusionary rule,[41] especially when the officer has acted in the good faith belief that his actions are legal.[42] The authors of part two pointed out that the exclusionary rule is not a constitutional requirement, but a judge-made rule established to enforce the requirements of the Constitution.[43] Furthermore, the rule must be used with care because the exclusion of evidence prevents "the 'whole truth' from being told,"[44] and it often results in the guilty going free from punishment. These statements merely reiterate the growing body of precedent coming from the Supreme Court that has criticized and limited the applications of the exclusionary rule.[45] In creating the good faith exception, however, the Fifth Circuit has enlarged upon the exceptions created by the Supreme Court.

The Fifth Circuit's exception is based on both the subjective good faith belief of the officer and the objective reasonableness of that belief. "It must therefore be based upon articulable premises sufficient to cause a reasonable, and reasonably trained, officer to believe that he was acting lawfully."[46] The good faith exception outlined by the court covers two basic types of situations.

One is the technical type violation illustrated by the situation in which an arrest is made by an officer relying on a statute that is later found to be invalid.[47] In those instances the Court has refused to exclude evidence seized in reliance on a statute later found unconstitutional.[48] In this situation the good faith exception proposed in *Williams* breaks no new ground.

The other situation in which the court's exception would apply occurs when the officer makes a good faith mistake. The agent's action in the principal case is directly in point. If the agent in good faith thought that Ms. Williams' violation of her bond conditions authorized him to arrest her, whether or not he was mistaken about his authority, the evidence should not be suppressed. Of course, the mistake must pass the reasona-

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41. Ball, note 39 *supra* at 635.

42. 622 F.2d at 841.

43. *Id.*

44. *Id.* at 841-42.

45. *See, e.g.*, notes 16-28 *supra* and accompanying text.

46. 622 F.2d at 841 n.4a.

47. *Id.* at 843.

48. *See* notes 27 and 28 *supra* and accompanying text. *See also* United States v. Carden, 529 F.2d 443 (5th Cir.), *cert. denied*, 429 U.S. 848 (1976), *modified on other grounds sub. nom.* United States v. Ashley, 569 F.2d 975 (5th Cir.), *cert. denied* 439 U.S. 853 (1978); Hamrick v. Wainwright, 465 F.2d 940 (5th Cir. 1972); United States v. Kilgen, 445 F.2d 287 (5th Cir. 1971).

bleness test set by the court.[49] The court in *Williams* relied on two Supreme Court cases as precedent for not applying the exclusionary rule to an officer's good faith mistake. According to the Court, *United States v. Janis*[50] is an example of a situation in which police relied in good faith on a warrant that was later found to be defective. In *Janis*, evidence illegally seized was admitted in a federal tax proceeding. The Court in *Janis* specifically limited the holding to admission of evidence in a civil proceeding and to use by a different sovereign from the one committing the error. In *Williams*, the court relied on the stated rationale that excluding evidence from the tax proceeding was unlikely to deter further unlawful police actions. Another basis for this proposition is *Michigan v. Tucker*,[51] in which interrogation of a suspect revealed information to the police that subsequently led them to a witness who testified for the state at trial. Since the interrogation took place prior to the decision in *Miranda v. Arizona*,[52] the defendant was not advised of his fifth amendment rights. In spite of the fact that *Miranda* was held to have a retroactive effect in criminal cases commenced subsequent to the decision in *Miranda*,[53] the Court, nevertheless, said that the police were acting in complete good faith and refused to exclude the witness' testimony.[54]

Both types of good faith error were recognized in *Williams:* a mistake by the agent as to whether Ms. Williams' violation of her bond conditions was a crime as well as an error in his interpretation of his power to arrest her. Because the errors were made by the agent in the good faith belief that he was acting correctly, the court refused to suppress evidence discovered as a result of the mistake. The court reasoned that "Williams is not on trial for bail jumping. Williams is on trial for possession of a large quantity of heroin. A good-faith mistake about the legal intricacies of bail jumping would not require exclusion of that heroin found in an incidental search."[55]

The court distinguished a recent Supreme Court case, *Ybarra v. Illinois*,[56] in which evidence seized under a statute that failed to require probable cause was excluded. The court found that evidence seized under a statute that failed to require probable cause was a different matter entirely from evidence obtained through an arresting officer's good faith,

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49. 622 F.2d at 844.
50. 428 U.S. 433 (1976).
51. 417 U.S. 433 (1974).
52. 384 U.S. 436 (1966).
53. Johnson v. New Jersey, 384 U.S. 719 (1966). *See* 417 U.S. at 453-54 (Brennan, J., concurring).
54. 417 U.S. at 446-52.
55. 622 F.2d at 846.
56. 444 U.S. 85 (1979).

though mistaken, belief in the existence of probable cause to arrest.[57] Thus, a majority of the court would base its holding solely on the good faith exception and allow the evidence to be admitted even if the holding in part one had not exonerated the agent from error.

Judge Rubin, in a special concurrence joined by nine other judges,[58] found it to be "purely a hypothetical: whether the evidence would have been admissible had the search been unconstitutional."[59] He accused the majority of arriving at a harmful result by merely " 'reaching out' for a vehicle to change a long line of precedent."[60] Judge Rubin questioned the significance of the fact that four Justices of the Supreme Court had voiced support for a good faith exception. In his opinion, it was far more significant that there are five others who have not done so[61] and that the Supreme Court has failed to create a good faith exception to the exclusionary rule. He also focused on Chief Justice Burger's dissent in *Bivins v. Six Unknown Named Agents,*[62] which criticized the exclusionary rule, and noted that Burger specifically said that until alternatives could be developed, he did not advocate abandoning the rule. The Chief Justice instead asked for alternative legislation. Judge Rubin, while conceding that there have been unsuccessful legislative efforts in the past, suggested that further attempts should be forthcoming and that waiting for them may be the best course to take. He also pointed out that the arguments for a good faith exception are to be found only in dissents and in law review articles, many of which are "polemic."[63] He suggested that the adoption of the rule by the majority was precipitous and unnecessary.

In Judge Rubin's view, a major shortcoming of the majority opinion was its reliance on the rationale of deterrence of official lawlessness as the sole basis for the exclusionary rule. He cited *Weeks* and *Mapp,* in which the rule was said to have a constitutional foundation and to be necessary for the protection of judicial integrity. He urged that there be a more complete analysis of all the reasons for the exclusionary rule before it is modified.[64] He pointed out that this case, in which all judges agreed in the result,[65] should not be the vehicle for radical change because the chance of Supreme Court review is unlikely. Finally, Judge Rubin questioned the clarity of the exception as outlined, finding the scope of the

57. 622 F.2d at 846.
58. *Id.* at 848.
59. *Id.*
60. *Id.* (quoting Crist v. Cline, 434 U.S. 980, 981 (1977) (Marshall, J., dissenting from the order restoring the case to calendar for oral argument.)).
61. *Id.* at 848.
62. 403 U.S. 388, 421 (1971).
63. 622 F.2d at 849.
64. *Id.* at 849-50.
65. *Id.* at 848.

terms "good faith" and "reasonable" too indefinite.[66]

Though the majority cited numerous Supreme Court cases which had limited the use of the exclusionary rule, they can be distinguished from the type of limitation outlined by the Fifth Circuit. The Supreme Court cases do contain criticisms of the rule for failing to deter violations of the fourth amendment and for thwarting the truth seeking functions of the trial process. However, in none of these is there an absolute excuse for a law enforcement officer who, although reasonably, misunderstands his power to arrest or mistakes the criminality of the act of the defendant. To excuse a good faith mistake is different from refusing to apply a statute or court rule retroactively or allowing the collateral use of illegally seized evidence.

The precedents offered from the Fifth Circuit itself more clearly point the way to the decision in *Williams* than the cited Supreme Court cases. If the statute under which Markonni arrested Ms. Williams was valid at the time of her arrest and was later declared invalid, according to Fifth Circuit precedent, she could challenge any conviction under the statute itself, but could not challenge the use of evidence of other crimes obtained during the arrest and search.[67] Likewise, in the realm of the good faith mistake, the court has allowed a search warrant based on an insufficient affidavit to be bolstered by sworn testimony of the affiant, and evidence secured pursuant to that warrant was not suppressed.[68] The court also has refused to suppress evidence obtained through improper collaboration of state and federal agents, recognizing that the actions were taken in good faith, but also noting the possibility of habitual violations which would be dealt with through use of the exclusionary rule.[69] Even assuming that these previous decisions provide adequate precedent for the rule in *Williams*, it is questionable whether the Fifth Circuit and not the Supreme Court should have been the forum for breaking new ground in interpreting a defendant's fourth amendment rights.

The announcement of this new and important approach to violation of fourth amendment constitutional rights in an alternative opinion by the Fifth Circuit may indeed cause future courts problems of interpretation. As Judge Rubin argued, the chances for Supreme Court review are minimized by the fact that there was no disagreement as to the decision in part one. Also, this departure from prior thinking merits an entire opinion with thorough discussion of all pertinent issues.[70]

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66. *Id.* at 850 n.4.

67. Hamrick v. Wainwright, 465 F.2d 940, 941-42 (5th Cir. 1972).

68. United States v. Hill, 500 F.2d 315 (5th Cir. 1974), *cert. denied*, 420 U.S. 931 (1975).

69. United States v. Wolffs, 594 F.2d 77 (5th Cir. 1979).

70. These issues should include a balancing of the deterrence factor against considerations of integrity and constitutionality.

As courts have begun to assess the good faith of officials in determining how to treat violations of constitutional rights, arguments for and against the adoption of a good faith exception to the exclusionary rule have been suggested. The principal arguments against this exception center on the importance of fourth amendment protections to our society and the fact that there are virtually no viable alternatives to the exclusionary rule that would assure these protections.[71] Many courts have declared that the exclusionary rule is not a constitutional requirement.[72] In debating that proposition, scholars have contended that the exclusionary rule has constitutional foundations since the Supreme Court demands the exclusion of evidence from state trials. It is inconsistent, they suggest, for the Court to claim it is acting in a supervisory capacity rather than from a constitutional mandate.[73] The fact that the Court applies the rule to state criminal proceedings suggests that the exclusionary rule is more than a mere rule of evidence.

Other arguments against the good faith exception focus on the difficulties that courts have in applying this exception. Courts must necessarily ascertain both the subjective and objective states of mind of the officer to determine whether he acted in reasonable good faith.[74] There is the possibility that an officer may state that he acted in good faith when he in fact knew that he was acting illegally. This is the very problem the exclusionary rule was designed to avoid. In emphasizing the deterrence function, the courts have readily assumed that deterrence cannot be accomplished in some applications of the exclusionary rule. This assumption, however, overlooks the educative function served by excluding evidence that is seized in violation of the fourth amendment. If evidence is excluded because of his mistake, the officer will probably know it, since he is often called to testify in court. If his mistake caused exclusion, he probably would not commit the error again. However, if evidence is admitted despite the error, he is not encouraged to comply with the demands of the Constitution. In addition, by assuming that exclusion of evidence has failed to deter unlawful police activity, the courts are overlooking a growing amount of research and scholarship to the contrary.[75] The question is

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71. 367 U.S. 643, 670 (1961) (Douglas, J., concurring).

72. *See, e.g.*, Stone v. Powell, 428 U.S. 465, 486 (1976); United States v. Calandra, 414 U.S. 338, 348 (1974).

73. *Id.* at 678. *See also* Sunderland, *Exclusionary Rule: A Requirement of Constitutional Principle*, 69 J. CRIM. L. 141 (1978); Yarbrough, *The Flexible Exclusionary Rule and the Crime Rate*, 6 AM. J. CRIM. L. 1 (1978).

74. Bain and Kelly, *Fruit of the Poisonous Tree: Recent Developments As Viewed Through Its Exceptions*, 31 U. OF MIAMI L. REV. 615, 649 (1977).

75. *See* Canon, *Is the Exclusionary Rule in Failing Health? Some New Data and A Plea Against a Precipitous Conclusion*, 62 KY. L. J. 681 (1974); Canon, *The Exclusionary Rule: Have Critics Proven That It Doesn't Deter Police?*, 62 JUD. 398 (1978); Kamisar, *Is the*

definitely not yet closed.[76]

If, on the other hand, the exclusionary rule is not constitutionally mandated, which is now the Supreme Court's view, there are strong arguments against applying it when the officer is perceived to have acted in a good faith belief that he was within the law. This notion is especially true if, as many believe, the deterring factor of exclusion is not really effective, because the result of exclusion is to eliminate any use at trial of evidence which can vitally affect the fact finding, truth seeking function of the trial process. The psychological effects of excluding evidence also influence the arguments for limiting the rule or enlarging its exceptions, since when exclusion works, it often sets free one who is obviously guilty of a crime. The excluded evidence is often the only basis for proving guilt.

In adopting the good faith exception to the exclusionary rule, the Fifth Circuit, by a narrow majority, has aligned itself on one side of a very controversial issue. As Judge Rubin argued, this case is not likely to be tested in the Supreme Court, but surely the proper test case will soon arise. Until that time, the Fifth Circuit may be alone in allowing a good faith exception to the exclusionary rule. One hopes that the adoption of this exception by the Fifth Circuit will result in a more thorough analysis of the pros and cons of the exclusionary rule by the Supreme Court in deciding whether to adopt or reject the exception for the whole country.

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*Exclusionary Rule an "Illogical" or "Unnatural" Interpretation of the Fourth Amendment?*, 62 JUD. 67 (1978).

76. In an article that outlines in great detail the good faith exception from its earliest beginnings, the author concludes that the good faith exception to the exclusionary rule may be preferable to the two approaches taken by the Burger Court to limit the exclusionary rule. These limitations have come by way of an expansion of exigent circumstances which would allow a warrantless search and insistence on "the deterrence rationale as the exclusive justification for suppression." Ball, *Good Faith and the Fourth Amendment: the "Reasonable" Exception to the Exclusionary Rule*, 69 J. CRIM. L. & CRIMINOLOGY, 635, 649 (1978).