

# CASE SUMMARIES

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## CRIMINAL LAW

### The Minimization of the Exclusionary Rule

The Fourth Amendment provides that people shall be free from unreasonable searches and seizures. The United States Supreme Court first acknowledged the concept of the exclusionary rule in 1914, when, in *Weeks v. United States*, 232 U.S. 383, 58 L.Ed. 562, 34 S.Ct. 341 (1914), the Court held that evidence seized in violation of the Fourth Amendment could not be used at trial by prosecutors. Since the *Weeks* decision, the Court has carved out certain exceptions to the rule. The recently decided Supreme Court case *Herring v. United States*, \_\_\_ U.S. \_\_\_, 172 L.Ed.2d 496, 129 S.Ct. 695 (2009), was no different, as the Court again did not apply the exclusionary rule.

In *Herring*, the defendant was taken into custody pursuant to an active warrant. When the officers heard over the radio there was an active warrant for the defendant, they requested the clerk's office fax over a copy of the warrant while they placed the defendant under arrest. Officers conducted a custodial search of the defendant's person and his vehicle, which revealed narcotics and a handgun. After the defendant was in custody, it was revealed that the warrant for the defendant was no longer active; rather, it had been previously recalled but never taken out of the court clerk's system. The defendant was subsequently indicted for the drugs and the weapon.

On appeal, the Eleventh Circuit affirmed the district court's decision in denying the defendant's motion to suppress on the grounds that his initial arrest was illegal. The Court found that the error was negligent and the police had acted under a good-faith belief that the warrant was still active. The application of the exclusionary rule in this case would not have the effect of deterring bad police behavior in the future, as the police in this case were not found to have been careless. The United States Supreme Court granted the defendant's petition for certiorari to resolve the issue of whether the exclusionary rule is applicable in this case, as other courts have excluded evidence in similar situations with similar police errors.

The Court first examined the conduct of the police officers in the context of several previously decided Supreme Court cases, including *United States v. Leon*, 468 U.S. 897, 82 L.Ed.2d 677, 104 S.Ct. 3405 (1984). In *Leon*, the Court held that that illegally obtained evidence should be suppressed when the exclusion would serve as a deterrent for bad police behavior. However, if the police can show they acted in "good faith," despite the fact they were acting in the absence of probable cause or with an erroneous search warrant, as was the case in *Leon*, the evidence will not be suppressed. One must look at the objective reasonableness of all parties involved to make that determination, as the evidence suppressed should be a measure of last resort and to deter Fourth Amendment violations in the future. Assessing the flagrancy of the police misconduct should also be considered when applying the exclusionary rule. In *Herring*, the Court looked at the actions of the officers and found they did nothing improper. 2009 U.S.

LEXIS at \*10. They acted quickly and requested a faxed confirmation that the warrant was in effect; it was no fault of the officers that the warrant was not taken out of the court clerk's computer database.

The Court held that in order to trigger the exclusionary rule, the police conduct must be "sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system." 2009 U.S. LEXIS at \*17. This is an objective analysis of the police officers, not an inquiry into the particular arresting officer's subjective awareness at the time of the arrest. In this case, the facts did not rise to that level; despite the fact that the warrant was quashed and recalled, that fact does not rise to the level that the evidence obtained should be excluded. The Court pointed out if it was shown that the police were reckless in maintaining their warrant system or made false entries into that system to make false arrests, exclusion would apply as the basis of a Fourth Amendment violation. However, the officers in this case were innocent of any wrongdoing, and the negligence was in the record-keeping of the court clerk. Their actions were not objectively culpable as to require the exclusion of the evidence; thus, the Court affirmed the Eleventh Circuit's decision.

The United States Supreme Court again limited the exclusionary rule here in *Herring*, showing criminal law practitioners that errors absent of any wanton or willful reckless conduct by the police will not trigger the exclusionary rule. Provided the police are objectively acting without any wrongdoing, the rule will not apply.

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