

on the beat

RESPONDING TO LITIGATION AFFECTING LAW ENFORCEMENT

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PREMIERE ISSUE!

Welcome to the first issue of "On the Beat." This newsletter will report on significant cases from the federal and Michigan courts affecting law enforcement agencies in the State of Michigan. This newsletter is provided as a courtesy to the municipal and township clients of Secret Wardle. We welcome any comments or questions you may have on the newsletter and they may be directed to the Governmental Liability Practice Group Leader, Edward D. Plato, at eplato@secretwardle.com or 248-539-2844.

Michigan Supreme Court Overrules Decades-Old Precedent Excluding Evidence And Holds That Police Officers Are Allowed To Make Honest Mistakes When Searching For Evidence

By Brandy Kuretich

On July 15, 2004, the Michigan Supreme Court decided *People v. Goldston* and whether the courts of this State would recognize a "good-faith" exception to the exclusionary rule of evidence, as do the federal courts pursuant to the United States Supreme Court decision in *United States v. Leon*, 468 U.S. 897 (1984).

The Fourth Amendment to the United States Constitution and the Michigan Constitution prohibit unreasonable searches and seizures without a warrant supported by probable cause. As a remedy to cure violations of the Fourth Amendment and to deter future violations by police personnel, as far back as 1914, the United States Supreme Court created the "exclusionary rule" whereby evidence obtained in violation of a person's Fourth Amendment rights would be excluded from criminal proceedings in federal cases. *Weeks v. United States*, 232 U.S. 383 (1914). Similarly, the Michigan Supreme Court recognized the exclusionary rule as well in its State prosecutions as stated in *People v. Marxhausen*, 204 Mich 559 (1919).

The primary benefit of the exclusionary rule is to deter police personnel from violating a person's Fourth Amendment rights. The burden of the exclusionary rule is that it prevents the

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The Michigan Supreme Court has recognized that the goal of the "exclusionary rule" is to deter officers from engaging in unreasonable searches and seizures and that this goal is not furthered where officers act in good-faith reasonable reliance on a search warrant subsequently found to be defective. However, the courts will determine the applicability of the exclusionary rule and the good-faith exception on a case-by-case basis. The courts will weigh the likelihood of deterring police misconduct against the cost of withholding reliable evidence supporting the commission of the crime. Officers must not be tempted to forsake their duty to protect an individual's liberty and privacy for the sake of expediency in obtaining evidence.

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prosecutor from using reliable evidence in its case-in-chief. Taking these considerations into account, the United States Supreme Court recognized an exception to the exclusionary rule in *United States v. Leon*. In *Leon*, the federal court adopted a “good-faith” exception to the exclusionary rule for situations where the police act in reasonable reliance on a warrant that is later deemed to be unconstitutional. The United States Supreme Court found that excluding evidence obtained by an officer whose conduct was objectively reasonable and within the scope of the search warrant has little deterrent affect on future police conduct. Under circumstances where the officer was acting in a manner that a reasonable officer would and should act in a similar situation, the United States Supreme Court adopted a “good-faith” exception and the evidence will not be excluded. However, for this exception to apply, the officer’s conduct must be objectively reasonable. Evidence will still be excluded if the officer misled the magistrate, the magistrate wholly abandons his judicial role, or the officer relies on a warrant that is so lacking in probable cause that his reliance on the warrant was unreasonable.

Before this very recent decision by the Michigan Supreme Court in *Goldston*, Michigan courts had not recognized a “good-faith” exception to the exclusionary rule applicable to state cases similar to that adopted by the United States Supreme Court in *Leon*. Based on a review of the Michigan Constitution, the Michigan Supreme Court found that it had the interpretive right under the common law to retreat from the judge-made exclusionary rule stated in *Marxhausen*. As such, the Michigan Supreme Court adopted a “good-faith” exception to the exclusionary rule in Michigan holding that the 1963 Michigan Constitution, art 1, § 11 can be interpreted in a manner consistent with the federal court’s interpretation of the Fourth Amendment in the *Leon* case. The Michigan Supreme Court agreed with the reasoning in *Leon* and found that the goal of the exclusionary rule would not be furthered by excluding evidence seized by officers who were acting in an objectively reasonable manner and in good-faith reliance on a search warrant later deemed to be unconstitutional.

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We welcome your questions and comments.

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