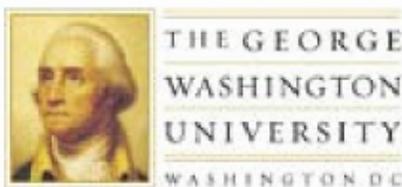


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## *United States v. Leon*

468 U.S. 897 (1984)

Paul J. Wahlbeck, George Washington University  
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7AB

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

*see Gates*

June 22, 1982

MEMORANDUM TO THE CONFERENCE

Re: No. 82-1771 -- United States v. Leon

This case has been relisted together with the holds for Illinois v. Gates, No. 81-430, and I have agreed to write a memorandum discussing it. Respondents were indicted for violation of federal drug laws, and successfully moved to suppress contraband seized by police pursuant to a search warrant authorizing search of respondent's residences and automobiles. The district court held that the search warrant was unsupported by probable cause.

The affidavit in support of the warrant stated that a confidential informant of unproven reliability told the police that he knew two persons who were engaged in selling large quantities of drugs from their home. He provided the address and said that some five months earlier he had been present at a sale of drugs at the residence. The police then initiated a month-long investigation, and observed numerous known drug traffickers enter the home. They also discovered that respondents frequented two other residences in the area. A search of two of the respondents at an airport revealed a quantity of marijuana. Based principally on this information, a state court judge issued a warrant authorizing searches of the respondents' residences and automobiles.

The district court found that the informant's reliability and credibility had not been established, and thus that probable cause did not exist. The district judge refused to recognize a good faith exception to the exclusionary rule. The Court of Appeals affirmed, relying on Aguilar and Spinelli, and also declining to recognize an exception to the exclusionary rule.

The petition for certiorari filed by the United States expressly declines to present the question whether the lower courts improperly concluded that probable cause to support the warrant was lacking. Pet. at 9, n.10. Instead, it presents only the question whether "the Fourth Amendment exclusionary rule should be modified so as not to bar the admission of evidence seized in reasonable, good-faith reliance on a search warrant that is subsequently held to be defective."

✓ A fairly persuasive argument can be made that the decision below is inconsistent with the opinion for the Court in Illinois v. Gates, and I suppose we have the power to GVR the case in light of Gates. It also provides, however, a useful vehicle for consideration of the reasonable good faith exception to the exclusionary rule. On balance, I think the briefs in this case, which involves a slightly different factual situation than does Massachusetts v. Sheppard, No. 82-963, would provide useful guidance if we should decide to formulate a good faith exception. I will vote to grant.

Sincerely,

*WMM*