[J-18-2010]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, ORIE MELVIN, JJ.

COMMONWEALTH OF PENNSYLVANIA,	:	No. 15 WAP 2009
	:	
Appellee	:	
	:	Appeal from the Order of the Superior
	:	Court entered September 3, 2008 at No.
v.	:	903 WDA 2007, affirming the Judgment of
	:	Sentence of the Court of Common Pleas
	:	of Allegheny County entered November
CALVIN HENDERSON,	:	20, 2006 at No. CP-02-CR-0011250-2005.
	:	
Appellant	:	
	:	ARGUED: April 13, 2010

OPINION

MR. JUSTICE SAYLOR[*] DECIDED: APRIL 25, 2012

In this appeal arising in the suppression context, we consider Pennsylvania's unique variant of the independent source rule, deriving from Commonwealth v. Mason, 535 Pa. 560, 637 A.2d 251 (1993).

Law enforcement officers suspected that Appellant may have co-perpetrated a violent rape-kidnapping. They sought samples of his DNA for comparison with material obtained from the victim and a vehicle used in the commission of the crimes. Detective Johnson, a member of a police sexual assault unit, prepared an affidavit in support of

[*] This matter was reassigned to this author.

probable cause; secured a magistrate's approval of a search warrant;[1] and collected samples of Appellant's blood, hair, and saliva. The ensuing DNA analysis implicated Appellant, and he was charged with kidnapping, rape, and other offenses.

Appellant lodged a pretrial motion to suppress on the ground that the detective's affidavit was insufficient to establish probable cause. See generally Kohl, 532 Pa. at 166, 615 A.2d at 315 ("Generally, a search or seizure is not reasonable unless it is conducted pursuant to a search warrant issued by a magistrate upon a showing of probable cause."). Accordingly, Appellant contended, the seizures from his body violated his rights under the Fourth Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution.[2]

The motion apparently raised concerns on the prosecution's part, as a decision was made to secure a second warrant. The strategy was to invoke the independent source doctrine as applied under Pennsylvania's Article I, Section 8 jurisprudence, deriving from Mason. Under this rule, evidence tainted by illegal police conduct (such as an unlawful seizure) nevertheless may be admitted into evidence if the evidence can be fairly regarded as having an origin independent of the unlawful conduct. See Mason, 535 Pa. at 565-68, 637 A.2d at 254-55; see also Commonwealth v. Melilli, 521 Pa. 405,

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[1] See generally Commonwealth v. Kohl, 532 Pa. 152, 166, 615 A.2d 308, 315 (1992) (explaining that the administration of a blood test performed by or at the direction of the government is a search).

[2] See generally Weeks v. United States, 232 U.S. 383, 398, 34 S. Ct. 341, 346 (1914) (implementing the exclusionary rule precluding the federal courts from admitting evidence procured in violation of an accused's Fourth Amendment rights); Mapp v. Ohio, 367 U.S. 643, 655, 81 S. Ct. 1684, 1691 (1961) (holding that, per the Fourteenth Amendment, "all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court"); Commonwealth v. Gordon, 546 Pa. 65, 71, 683 A.2d 253, 256 (1996) (explaining that the exclusionary rule also operates to enforce rights under Article I, Section 8 of the Pennsylvania Constitution).

420, 555 A.2d 1254, 1262 (1989) ("If the prosecution can demonstrate that the [challenged] evidence was procured from an independent origin – a means other than the tainted sources – the evidence will be admissible.").[3] Pursuant to the doctrine as it subsequently evolved in Commonwealth v. Melendez, 544 Pa. 323, 676 A.2d 226 (1996), the independent source is to be "truly independent from both the tainted evidence and the police or investigative team which engaged in the misconduct by which the tainted evidence was discovered." Id. at 334, 676 A.2d at 231 (quoting Mason, 535 Pa. at 573, 637 A.2d at 257-58 (Cappy, J., concurring)) (emphasis in original).[4]

Another member of the police sexual assault unit, Detective Evans, was tasked with undertaking a probable-cause investigation to support a second search warrant.

[3] To this extent at least, the approach under the Pennsylvania Constitution overlaps with federal constitutional jurisprudence. In Murray v. United States, 487 U.S. 533, 108 S. Ct. 2529 (1988), the United States Supreme Court explained that the exclusionary rule prohibits introduction of evidence obtained during an unlawful search, as well as any "derivative evidence . . . up to the point at which the connection with the unlawful search becomes 'so attenuated as to dissipate the taint.'" Id. at 536-37, 108 S. Ct. at 2533 (quoting Nardone v. United States, 308 U.S. 338, 341, 60 S. Ct. 266, 268 (1939)); see also Segura v. United States, 468 U.S. 796, 804, 104 S. Ct. 3380, 3385 (1984) (referring to derivative evidence as "fruit of the poisonous tree" (internal quotation marks and citation omitted)). However, the High Court stated, if certain facts initially become known to police who act illegally, those facts do not become "sacred and inaccessible," but rather, remain subject to admission so long as they are later discovered through a valid search warrant that is not based on the knowledge originally obtained by illegal means. Murray, 487 U.S. at 538, 108 S. Ct. at 2534 (quoting Holmes, J., in Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392, 40 S. Ct. 182, 183 (1920)). This Court initially followed Murray in Commonwealth v. Brundidge, 533 Pa. 167, 620 A.2d 1115 (1993).

[4] In this regard, the Melendez litmus differs from the federal approach, which focuses, more narrowly, on whether the decision to seek a warrant was prompted by something attained as a result of unlawful government conduct, and whether the approving magistrate had been informed of the improperly obtained information. See Murray, 487 U.S. at 542, 108 S. Ct. at 2536.

Detective Evans spoke with Detective Johnson, reviewed the existing case file and the victim's medical records, conducted an inquiry into Appellant's background, and interviewed one collateral witness. He then applied for and secured a second warrant, which was used to seize an additional sample of blood from Appellant.

In response, Appellant filed a second suppression motion. In it, he asserted that the evidence secured under the second warrant was not the product of an independent source. According to the motion, the "vast majority" of the information contained in Detective Evans' affidavit derived from the information previously gathered by Detective Johnson. Appellant further highlighted that Detective Evans was commissioned in direct response to the defense's first suppression motion. For these reasons, Appellant contended that the evidence "remains tainted by the original illegally seized evidence."

Detective Evans testified at the hearing on the suppression motions. In the brief direct examination, he indicated that, although he had been a member of the sex assault squad, he did not participate in the original investigation of Appellant's crimes. He explained that he had been tasked with securing a search warrant in March 2006, and, in preparation, he reviewed the reports in the case file, including medical records and crime laboratory reports;[5] conducted an inquiry into Appellant's criminal record; and spoke with a collateral witness. See N.T., May 22, 2006, at 53-55. Further, the detective attested that he did not rely on the warrant obtained by Detective Johnson. See id. at 56.

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[5] The record does not specifically indicate whether Detective Evans reviewed the DNA analysis of Appellant's blood secured under the first warrant. See N.T., May 22, 2006, at 54-55. He did confirm that the crime lab reports he reviewed included analysis of blood secured from Appellant's codefendant, in which the codefendant was excluded as a contributor to samples recovered from the victim and the vehicle used in perpetration of the crimes. See id. at 55.

On cross-examination, Detective Evans confirmed that he had reviewed the materials assembled by Detective Johnson and had spoken with him. See id. at 58-60, 64-65. He also acknowledged that he had reviewed the first warrant and affidavit of probable cause, see id. at 57, 61, but he again denied having relied upon the first warrant. See id. at 57. The detective conceded that he did not interview the victim, the main eyewitness, or several other witnesses, see id. at 63-64, and that the first nine paragraphs of his affidavit "came from" Detective Johnson's investigation. Id. at 60.[6] Although he did not agree that his efforts represented a mere expansion on Detective Johnson's work, see id. at 63, Detective Evans did say that many aspects of his affidavit derived "[f]rom the people that had done the investigation before" him. Id. at 67. Further, the detective confirmed that he at least knew that a motion to suppress was "on

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[6] Specifically, the following interchange occurred between defense counsel and Detective Evans on cross-examination:

> Q. Now, you will agree with me, if you will, that the first nine paragraphs was all information that you got from Detective Johnson's previous investigations?
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> A. You said-the first nine you say.
>
> Q. Up until the point where you say all the above information was documented and reported under the Pittsburgh Bureau of Police?
>
> A. Yes, sir.
>
> Q. So all that information was not obtained by you and that came from Detective Johnson's investigation, am I right?
>
> A. Yes.

N.T., May 22, 2006, at 60.

the way" at the time he received the assignment to perform a probable-cause investigation. Id. at 58.[7]

The suppression court denied Appellant's motions. In relevant part, it ruled that, while Detective Johnson's affidavit was insufficient to support a probable-cause determination, Detective Evans' was adequate and unconnected with the first investigation. According to the court, Detective Evans' affidavit "was a totally separate account of the facts evidence [sic] obtained in the investigation into the kidnapping and rape[,]" and "[n]o causal nexus existed between the blood test results obtained as a result of the first warrant and Detective Evans' Affidavit of Probable Cause dated March 23, 2006." Commonwealth v. Henderson, CC 200511250, slip op. at 4 (C.P. Allegheny, June 20, 2006). Thus, the suppression court determined that the independent source doctrine was satisfied.

Upon trial, Appellant was convicted of the charged offenses. An appeal ensued, in which the Superior Court affirmed in a memorandum opinion. In its analysis, the intermediate court relied on Commonwealth v. Smith, 808 A.2d 215 (Pa. Super. 2002), in which another panel previously accepted, for purposes of the independent source rule, that there may be some degree of overlap between the "independent" police investigation and a prior, tainted one. See id. at 221, 223. The court relied on Detective Evans' development of additional evidence with an "independent origin" as establishing that his affidavit was "free of the taint of the first search warrant." Commonwealth v. Henderson, No. 903 WDA 2007, slip op. at 11-12 (Pa. Super. Sept. 3, 2008).

We allowed a further discretionary appeal to consider whether the independent source doctrine validates a serial search warrant obtained from a second investigation

[7] In fact, Appellant filed his first motion to suppress two months before Detective Evans began his probable-cause investigation.

conducted by a police officer from the same department. See Commonwealth v. Henderson, 601 Pa. 564, 975 A.2d 1077 (2009) (per curiam). The specific probable-cause determinations relative to the two warrants are not presently at issue; here, we accept that -- although Detective Johnson's affidavit was inadequate -- the affidavit of Detective Evans was sufficient to establish probable cause.[8]

Presently, Appellant maintains that the independent source doctrine cannot pertain, because the suppression record does not establish that Detective Evans' investigation was "truly independent" of Detective Johnson's. To the contrary, Appellant and his amici, the Pennsylvania Association of Criminal Defense Lawyers and the American Civil Liberties Union of Pennsylvania, regard the former as "wholly dependent" on the latter. Brief for Appellant at 11. In this respect, Appellant stresses that the detectives were members of the same sex assault unit; they conferred about the case; Detective Evans worked from the preexisting case file; and a substantial portion of Detective Evans' affidavit overlaps with Detective Johnson's. Accord Brief for Amicus Pa. Ass'n of Criminal Def. Lawyers at 15 ("A truly independent investigation does not occur when officers from the same police department as the officer who illegally secured the evidence in question secure a new warrant by reviewing the illegal warrant and the reports of the first officer and add a few new facts to the new warrant.").

Appellant also questions the suppression court's finding of the absence of any link between the incriminating DNA test results from the initial blood sample and the second government investigation, given that the prosecution was in possession of the highly incriminatory results at the time such inquiry commenced. Relatedly, he raises

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[8] Also not before us is the argument of amicus American Civil Liberties Union of Pennsylvania that the Commonwealth inappropriately introduced into evidence at trial the laboratory report from the first, invalid blood seizure rather than the second, valid one. See Brief for Amicus ACLU of Pa. at 6 n.2, 8, 10-11.

fairness concerns associated with the use of the independent source doctrine to sanction serial police investigations motivated by challenges to incriminating evidence obtained pursuant to facially deficient first warrants. To address such concerns, Appellant favors a rule dictating that a second investigation motivated by flaws in a preceding one cannot serve as an independent source, as well as a rebuttable presumption of such motivation arising from spin-off investigations ensuing upon the filing of suppression motions.

The arguments of Appellant and his amici underscore the high value placed by this Court on the Pennsylvania Constitution's protection of individual privacy interests, as exemplified in such decisions as Commonwealth v. Edmunds, 526 Pa. 374, 394, 586 A.2d 887, 897 (1991) (interpreting Article I, Section 8 "to embody a strong notion of privacy, carefully safeguarded in this Commonwealth for the past two centuries"), and the Mason/Melendez line of decisions. In this regard, they observe that Article I, Section 8 has acquired an "identity and vitality . . . separate and distinct from that of the Fourth Amendment," Brief for Appellant at 17 (quotation marks and citation omitted), and they stress the broader purpose served by the exclusionary rule under Pennsylvania constitutional law. Compare, e.g., United States v. Leon, 468 U.S. 897, 916-18, 104 S. Ct. 3405, 3417-18 (1984) (explaining that the sole purpose of the exclusionary rule under Fourth Amendment law is to deter police misconduct, and applying a cost-benefits rationale to support adoption of a good-faith exception), with Edmunds, 526 Pa. at 399, 586 A.2d at 899 (rejecting the good-faith exception for purposes of the exclusionary rule as applied in the Article I, Section 8 context, with emphasis on the privacy rationale). See generally Brief for Amicus Pa. Ass'n of Criminal Def. Lawyers at 10 ("The development of Pennsylvania jurisprudence clearly reveals that this Court has recognized and maintained a strong preference for the rights

of the individual over coercive state action."). Appellant and his amici complain that the Superior Court, in this and other decisions, has not adhered to the ideals reflected in such decisions. See, e.g., Brief for ACLU of Pa. at 15 n.5 (attributing to the intermediate court "its own independent less stringent source doctrine").

Finally, Appellant regards the police conduct this case as most troublesome given the element of intrusiveness into the human body. See Commonwealth v. Martin, 534 Pa. 136, 142-43, 626 A.2d 556, 560 (1993) (explaining that, "although privacy may relate both to property and to one's person, an invasion of one's person is, in the usual case, [a] more severe intrusion on one's privacy interest than an invasion of one's property"). According to Appellant:

> What is at stake if the lower court's opinion is permitted to stand is an absolute abrogation of a citizen's expectation of privacy in his or her own person. Officers of this Commonwealth would be free to repeatedly extract blood from citizens, even though a prior search was found unconstitutional, correcting perceived defects in search warrants until a Constitutional level of probable cause has been demonstrated.

Brief for Appellant at 13.

The Commonwealth, for its part, does not contend that Detective Evans' investigation meets the Melendez requirement of "true independence." Rather, it advocates the application of a less exacting standard to circumstances that do not involve a knowing circumvention of a suspect's constitutional rights through intentional police misconduct.[9] The Commonwealth explains that this is, at least in substance, the

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[9] Mason involved an illegal police invasion into a private dwelling via the use of a battering ram. See Mason, 535 Pa. at 563-64, 637 A.2d at 253. Melendez strongly disapproved a police strategy of creating an "exigency" by arresting one person outside of a home, then using the arrest as an excuse to enter the premises illegally so as to (continued…)

approach taken by the Superior Court in a series of decisions involving illegal acquisitions of blood-related evidence, see Commonwealth v. Ruey, 854 A.2d 560 (Pa. Super. 2004), aff'd on other grounds 586 Pa. 230, 892 A.2d 802 (2006) (plurality); Smith, 808 A.2d at 215; and Commonwealth v. Lloyd, 948 A.2d 875 (Pa. Super. 2008), and suggested by two concurring Justices in Ruey, 586 Pa. at 256-59, 892 A.2d at 817-19 (Saylor, J., concurring, joined by Castille, C.J.). According to the Commonwealth, the appropriate standard in the absence of egregious police misconduct is the two-part inquiry set forth in Murray, namely, whether the decision to seek a warrant was prompted by something attained as a result of unlawful government conduct, and whether the approving magistrate had been informed of the improperly obtained information. See Murray, 487 U.S. at 542, 108 S. Ct. at 2536; see also supra notes 3 and 4; accord Brundidge, 533 Pa. at 175-76, 620 A.2d at 1119. While therefore refraining from use of the "truly independent" rubric, the Commonwealth regards Detective Evans' investigation as "sufficiently removed" from that of Detective Johnson to alleviate any taint. Brief for Appellee at 31. The Commonwealth concludes:

> [B]ecause the record in the instant matter establishes that there was sufficient probable cause beyond the appellant's DNA results upon which to seek a search warrant for appellant's blood, because the request for the second warrant was clearly not prompted by those results, because the magistrate did not issue the warrant based on those results, and because there was no police misconduct involved here, . . . the DNA results obtained from a draw of the appellant's blood were admissible under the independent source doctrine in conformity with Article 1, Section [8] of the Pennsylvania Constitution.

(…continued)
prevent persons inside the home from destroying evidence upon learning of the arrest. See Melendez, 544 Pa. at 334-35, 676 A.2d at 231-32.

Id. at 39.

We begin with the acknowledgement that, from an original-intent frame of reference relative to Melendez, the independent-investigative-team requirement appears to have been intended to extend to the broader category of unlawful searches and seizures, and the requirement of true independence was to have meant just that. The architect of the rule made this plain enough in his dissent in the recent, divided Ruey decision. See Ruey, 586 Pa. at 259-60, 892 A.2d at 819-20 (Cappy, C.J., dissenting) (opposing any departure from the requirement of true independence in a deficient affidavit scenario, even in the absence of overt police misconduct).

The sincere intentions underlying the innovation are clear enough. As amply related by Appellant and his amici, there was a heartfelt desire to vindicate the privacy interests of Pennsylvania citizens against unlawful government conduct. While there is a difference between egregious police misconduct and lesser infractions, such as carelessness, incompleteness, and/or oversight, the ideals underlying the independent approach to Article I, Section 8 jurisprudence – that privacy is to be guarded jealously against unlawful government intrusions and the probable-cause requirement is not to be diluted – extend to the wider range of incursions.

Since, however, the independent source doctrine lies outside the terms of the Pennsylvania Constitution, the embellishments of Mason and Melendez represented a form of prophylactic judicial lawmaking, as was candidly acknowledged in Mason in the following terms:

> It is axiomatic, of course, that once a judicially created rule is promulgated, the common law system requires that appellate courts consider this rule in its various factual guises and expand or contract the rule as justice requires.

Mason, 535 Pa. at 568, 637 A.2d at 255. This has, of course, left the courts free in subsequent cases to consider whether the broader pronouncements made there are as sensibly applied elsewhere, as new fact patterns are presented diverging from those before the Court in Mason and Melendez.

Notably, for better or for worse, the experience with broadly stated prophylactic rules often has been that they cannot be sustained on their original terms. A ready example is the judicial rule that police were not to interrogate an arrestee for more than six hours after arrest unless the accused was brought before a neutral magistrate and arraigned, on pain of suppression of inculpatory statements attained in violation of the rule. See Commonwealth v. Davenport, 471 Pa. 278, 286, 370 A.2d 301, 306 (1977). In subsequent decisions, this rule became attenuated through pronounced limitations and exceptions, so that the force intended by the original proponents ultimately was lost. See Commonwealth v. Perez, 577 Pa. 360, 371-72 & n.6, 845 A.2d 779, 785-86 & n.6 (2004) (cataloguing and discussing various of the limitations and exceptions to the six-hour prompt-arraignment rule). For this reason, regardless of its salutary purposes, the bright-line six-hour prompt arraignment rule ultimately was discarded, see id., and that abandonment was supported even by a Justice who would have preferred enforcement of the rule on its original terms. See id. at 381-82, 845 A.2d at 792 (Saylor, J., concurring and dissenting) (supporting the abrogation of the prompt-arraignment rule only in light of its effective evisceration over time).[10]

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[10] Another example of an arena in which the Court has had great difficulty maintaining a stable independent state constitutional jurisprudence is the automobile search-and-seizure arena, as manifested by the divergent range of expressions of the Justices in Commonwealth v. Perry, 568 Pa. 499, 798 A.2d 697 (2002) (Opinion Announcing the Judgment of the Court).

A similar weakening of the Melendez requirement of true independence can be seen in the present case. No one could seriously contend that Detective Johnson's and Evans' investigations were "truly independent" under a conventional understanding of those words, where the two conferred about the case and the latter worked directly from the case file previously maintained by the former.[11] Indeed, to its credit, the Commonwealth does not so argue. Nevertheless, in the present case, the suppression court, believing Melendez applicable, implicitly diluted the true independence requirement by deeming it satisfied in spite of a collaborative transfer of a case file.

The greatest difficulty in the enforcement of a prophylactic rule intended to guard individual liberties is on account of the competing value in society's interest in identifying and punishing wrongdoers. Among other ways, this is manifested in the context of the independent source rule in the courts' reluctance to put police in a worse position than they were in prior to an irregularity. See Brundidge, 533 Pa. at 176-77, 620 A.2d at 1120. Furthermore, this tension between privacy and criminal justice enforcement has led to cost-benefit balancing in the search-and-seizure arena. See, e.g., Leon, 468 U.S. at 922, 104 S. Ct. at 3420 (explaining, for purposes of Fourth Amendment law, that "the marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot

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[11] The Commonwealth also never established with any certainty, one way or another, whether Detective Evans was aware of the incriminatory results of the DNA testing of the first blood sample obtained from Appellant. As Appellant and his amici argue, those results would have created a powerful incentive on the part of law enforcement to secure the second sample in the face of a deficient first warrant. Conversely, had the first sample excluded Appellant as a contributor relative to the crime-scene materials, it is difficult to conceive why the prosecution would pursue a second sample. Particularly given the incentives involved, and in the absence of any specific testimony on the point, on this record it is very difficult to credit the suppression court's finding that the Commonwealth proved the absence of any causal nexus between the results of the first test and Detective Evans' affidavit of probable cause.

justify the substantial costs of exclusion"). While the execution of this approach has had strong detractors, see, e.g., WAYNE R. LAFAVE, 1 SEARCH AND SEIZURE, A TREATISE ON THE FOURTH AMENDMENT §1.3(b) (4th ed. 2004), experience shows this type of assessment will occur in the courts despite the best efforts of those jurists who may oppose it, and it is our considered position that it is better that it be done in the open rather than occurring as unstated subtext.

In the present circumstances, we are unwilling to enforce a "true independence" rule in the absence of police misconduct and on pain of the Commonwealth being forever barred from obtaining non-evanescent evidence connecting Appellant with his crimes. In answer to the specific question presented, we hold that suppression is not required on account of Detective Evans' status as a member of the same police department as Detective Johnson. Rather, in light of the factual circumstances before the Court in both Melendez and Mason, we deem it appropriate to limit the independent police team requirement to situations in which the rule prevents police from exploiting the fruits of their own willful misconduct.[12] Where such malfeasance is not present, we agree with the Superior Court that the Murray standard strikes the appropriate balance between privacy and law enforcement. See Lloyd, 948 A.2d at 881-82. Ultimately, we believe the "twin aims" of Article I, Section 8 – namely, the safeguarding of privacy and

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[12] See Mason, 535 Pa. at 571-72, 637 A.2d at 257 ("[W]here police seize evidence in the absence of a warrant or exigent circumstances by forcibly entering a dwelling place, their act constitutes a violation of Article I, Section 8 of the Pennsylvania Constitution and items seized pursuant to their illegal conduct may not be introduced into evidence[.]"); Melendez, 544 Pa. at 334-35, 676 A.2d at 231 ("The Pennsylvania Constitution does not allow police intrusions exemplified by this case and Mason. Government agents may not enter private dwellings through the use of battering rams as in Mason, or by effecting illegal stops and seizures as in this case, and secure the premises by detaining those who occupy the premises while police wait to learn whether their application for a warrant has been approved.").

enforcement of the probable-cause requirement – may be vindicated best, and most stably, by taking a more conservative approach to the departure this Court has taken from the established Fourth Amendment jurisprudence.

Finally, we acknowledge the intrusiveness involved in the performance of a second blood draw occasioned by a defective first warrant. We note only that the need for the serial sample is also an unintended consequence of a previous departure from Fourth Amendment law, under which suppression would not have been required of results of the first DNA test. See Leon, 468 U.S. at 926, 104 S. Ct. at 3422 ("In the absence of an allegation that the magistrate abandoned his detached and neutral role, suppression is appropriate only if the officers were dishonest or reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause.").

The order of the Superior Court is affirmed.

Madame Justice Orie Melvin did not participate in the consideration or decision of this case.

Mr. Chief Justice Castille and Messrs. Justice Eakin and McCaffery join the opinion.

Mr. Chief Justice Castille files a concurring opinion.

Madame Justice Todd files a concurring opinion in which Mr. Justice Baer joins.