

[J-34-2013]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, STEVENS, JJ.

COMMONWEALTH OF PENNSYLVANIA,	:	No. 67 MAP 2012
	:	
Appellant	:	Appeal from the order of Superior Court
	:	entered November 29, 2011 at No. 381
	:	MDA 2011, affirming/vacating and
v.	:	remanding in part the order of the Luzerne
	:	County Court of Common Pleas, Criminal
	:	Division, dated January 24, 2011 at No.
RICHARD ALLEN JOHNSON,	:	CP-40-CR-0000947-2010
	:	
Appellee	:	
	:	
	:	SUBMITTED: April 25, 2013

OPINION

MR. CHIEF JUSTICE CASTILLE*

DECIDED: February 18, 2014

This matter turns upon whether the Superior Court erred in affirming the trial court's suppression of physical evidence seized incident to an arrest based on an invalid (expired) arrest warrant, where the police officer reasonably and in good faith believed that the arrest warrant was valid. We hold that the evidence was properly suppressed under Article I, Section 8 of the Pennsylvania Constitution and this Court's decision in Commonwealth v. Edmunds, 586 A.2d 887 (Pa. 1991) (rejecting federal

* This matter was reassigned to this author.

good faith exception to exclusionary rule in case involving evidence seized pursuant to defective search warrant). Accordingly, we affirm the Superior Court's order.

On March 8, 2010, appellee Richard Allen Johnson was a passenger in a vehicle in Wilkes-Barre which was stopped by State Trooper James Knott, who had previously received a radio communication that the vehicle in question had been involved in a drug transaction, and who then observed that the vehicle had a broken tail light. Upon requesting identification and processing appellee's name through his patrol car computer, Trooper Knott received a "hit" message advising that there was an active arrest warrant for appellee. Trooper Knott then placed appellee under arrest and conducted a pat-down search during which he discovered thirty-seven packets of suspected heroin, two cell phones and \$1674.00 in cash. Trooper Knott placed appellee in the back of a police car and transported him to the police barracks, where he read appellee the Miranda warnings.¹ Appellee made several statements to Trooper Knott. In one statement, appellee indicated that he is a drug dealer and that the driver of the vehicle bought drugs from him. In a later statement, appellee claimed he is a user of drugs, not a seller, and that the cash he carried at the time of the arrest and pat-down search was a tax refund.

Trooper Knott subsequently determined that the warrant notification he relied upon when he arrested appellee was no longer valid and should have been recalled, since it had previously been served on appellee nine days earlier, on February 27, 2010. Appellee was nonetheless charged with three violations of the Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. §§ 780-113(a)(16), (a)(30) and (a)(32). Appellee moved to suppress the physical evidence recovered during the search incident to his arrest, as well as the incriminating statements he made to Trooper

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

Knott. Appellee alleged that his underlying arrest was unlawful under both the Fourth Amendment of the U.S. Constitution and Article I, Section 8 of the Pennsylvania Constitution. After a hearing and argument in the Court of Common Pleas of Luzerne County, the court granted appellee's motion and ordered suppression of the evidence under Article I, Section 8. The court found as a fact that Trooper Knott had acted in good faith in arresting appellee on the basis of what Knott mistakenly believed was an active warrant, but the court reasoned that there is no good faith exception to the exclusionary rule under the Pennsylvania Constitution. Id. at 6 (citing Edmunds). The court concluded that the physical evidence, as well as the statements obtained later at the police barracks, were the fruits of an illegal arrest based on an invalid warrant, and therefore must be suppressed. Tr. Ct. Opinion at 7 (citing Commonwealth v. McFeely, 502 A.2d 167 (Pa. 1985) (listing factors to consider in determining whether connection between confession and warrantless arrest was so attenuated as to dissipate taint of illegal arrest)).

The Commonwealth filed an appeal to the Superior Court, certifying that the suppression court's order terminated or substantially handicapped the prosecution. See Pa.R.A.P. 311(d) (in criminal cases, Commonwealth may take appeal as of right from order that does not end entire case where Commonwealth certifies that order will terminate or substantially handicap prosecution). A Superior Court panel filed a short unpublished memorandum opinion affirming that part of the order which suppressed the physical evidence seized from appellee incident to arrest, but vacating that part of the order which suppressed appellee's statements, and remanding to the trial court for reconsideration of the exclusion of those statements under Commonwealth v. Smith, 995 A.2d 1143 (Pa. 2010) (not all confessions or admissions secured from illegally arrested persons are *per se* inadmissible as trial evidence). In affirming the

suppression of the physical evidence seized from appellee, the panel relied on a prior Superior Court decision, Commonwealth v. Antoszyk, 985 A.2d 975 (Pa. Super. 2009), for the proposition that there is no “good faith exception” to the exclusionary rule under the Pennsylvania Constitution, and that contraband seized pursuant to an invalid warrant is properly suppressed.²

The Commonwealth filed a petition for allowance of appeal, and this Court granted allocatur to consider the following question: “Whether the Superior Court erred in affirming the suppression of evidence seized incident to an arrest based on an invalid arrest warrant, where the police officer reasonably and in good faith believed that the warrant was valid?” Commonwealth v. Johnson, 51 A.3d 180 (Pa. 2012). No issues related to the admissibility of appellee’s post-arrest statements are before the Court in this appeal; the Superior Court decision controls that issue.

The Commonwealth argues that suppression of the physical evidence obtained as a result of appellee’s arrest was an inappropriate remedy given the trooper’s reasonable and proper reliance on the warrant. The Commonwealth relies on Smith, *supra*, where this Court held, *inter alia*, that although the defendant’s arrest on an expired warrant was illegal, statements secured from him after Miranda warnings were issued were admissible, the Court noting that the police had acted on an administrative error rather than pursuant to an intent to improperly coerce a confession. The Commonwealth relies in part on the Smith Court’s reference to the Fourth Amendment

² The Superior Court’s decision in Antoszyk was affirmed by operation of law in a *per curiam* order, when this Court, with only six justices participating, deadlocked 3-3. Commonwealth v. Antoszyk, 38 A.3d 816 (Pa. 2012). Mr. Justice Eakin filed an opinion in support of reversal, which was joined by this author and Mr. Justice McCaffery. That opinion would have held, *inter alia*, that the case did not actually implicate the good faith exception, and that the Superior Court erred in applying it to affirm the suppression order.

decision in Herring v. United States, 555 U.S. 135 (2009), as further support for its position.³ The Commonwealth argues that the reasoning in Smith should apply here, where the police acted on a warrant they believed to be valid, and that the physical evidence obtained as a result of the arrest should not be suppressed. The Commonwealth challenges the Superior Court's conclusion that because there is no good faith exception to the exclusionary rule under Article I, Section 8 of the Pennsylvania Constitution, the evidence seized here must be suppressed; the Commonwealth asserts instead that "there is more to this case than the 'good faith' exception." Commonwealth's Brief at 11. According to the Commonwealth, the absence of a good faith exception should not lead to the exclusion of evidence in every case where the police act on a genuine but mistaken belief that they are entitled to arrest a citizen.

Appellee argues that there was no probable cause to support his arrest other than the invalid arrest warrant, and, even if the warrant were valid, the Commonwealth did not present evidence of probable cause for the warrant itself. Appellee argues that the items seized by the police after the invalid arrest were therefore properly suppressed. Moreover, argues appellee, as a matter of Pennsylvania constitutional law,

³ In Herring, the U.S. Supreme Court held that the federal exclusionary rule did not necessarily apply to evidence seized pursuant to an expired arrest warrant; instead, the good faith exception to the exclusionary rule could apply, depending on the circumstances. Since the error in failing to purge the expired warrant in Herring was the result of isolated negligence attenuated from the arrest, the Court held, the jury should not be barred from considering all the evidence in the case. 555 U.S. at 137. In Smith, this Court did refer to Herring briefly, as support for its statement that the invalid warrant on which Smith was arrested "was not fabricated to secure appellant's arrest in order to coerce his confession." Smith, 995 A.2d at 1153. As discussed in detail *infra*, however, Smith did not involve or resolve the question of the admissibility of physical evidence seized incident to an illegal arrest. In addition, the Smith case did not involve questions of Pennsylvania constitutional law.

this Court directly rejected a good faith exception to the exclusionary rule in Edmunds. Appellee argues that Edmunds was based on the Pennsylvania Constitution's mandate to safeguard the privacy rights of individuals, see PA. CONST. art. I, § 8, rather than the need to deter police misconduct, the theory that underpins the jurisprudence of the U.S. Supreme Court in interpreting the Fourth Amendment.

Appellee also rejects the Commonwealth's argument that this Court's decision in Smith undermined Pennsylvania precedent following Edmunds, simply by making a "veiled reference" to the U.S. Supreme Court's decision in Herring. Appellee's Brief at 10. Appellee further argues that Smith does not control this case. According to appellee, Smith solely addressed the voluntariness of statements made after an illegal arrest, and, specifically, whether a post-arrest confession was sufficiently attenuated from an illegal arrest such that the statements might be considered voluntary. Appellee argues that attenuation and voluntariness simply are not at issue in a case such as this where the physical evidence suppressed was actually seized by the police pursuant to an illegal arrest based on the invalid warrant. Moreover, argues appellee, Smith does not address the legal issue here: whether there is a good faith exception to the exclusionary rule as a matter of Pennsylvania law in the arrest warrant scenario. Finally, appellee insists that any alleged good faith by Trooper Knott is irrelevant in determining whether evidence must be suppressed because the exclusionary rule employed to enforce Article I, Section 8 arises out of the constitutional mandate that privacy rights must be upheld.

The Defender Association of Philadelphia and the Pennsylvania Association of Criminal Defense Lawyers ("PACDL") filed *amicus curiae* briefs in support of appellee. The Defender Association argues that, although this Court "effectively invites the Commonwealth" to argue for reconsideration of Edmunds, the Commonwealth did not

accept that invitation, and the Court should therefore resolve the Commonwealth's claim as presented. The Defender Association argues further that Smith, on which the Commonwealth relies instead, is inapposite. However, the Defender Association addresses the good faith exception in the alternative, and argues that the exception should once again be rejected by this Court. Similarly, the PACDL argues that Pennsylvania decisional law has long required that arrests be based upon probable cause, and that physical evidence seized as the result of a search incident to an unlawful arrest must be excluded; according to the PACDL, a police officer's reasonable but mistaken belief in the existence of a valid warrant is constitutionally irrelevant. The PACDL further argues that the U.S. Supreme Court's Fourth Amendment decision in Herring – which focuses on the *mens rea* of a police officer – is flawed as a Fourth Amendment matter, but that in any event the decision should be deemed inapplicable given the privacy right underpinnings of Article I, Section 8 as expressed in various decisions of this Court, including Edmunds.

Assuming that there is support in the record for the suppression court's factual findings -- and there is no dispute here on the governing facts -- we are bound by those facts and we may reverse only if the legal conclusions drawn from those facts are in error. Commonwealth v. Cortez, 491 A.2d 111, 112 (Pa. 1985). If there is sufficient evidence of record to support the suppression court's ruling and the court has not misapplied the law, we will not substitute our credibility determinations for those of the suppression court judge. However, if the court has misapplied the law, we must reverse that court's determination. Commonwealth v. Queen, 639 A.2d 443, 445 (Pa. 1994).

We find that the trial court properly suppressed the physical evidence seized by police incident to an arrest based solely on an invalid, expired arrest warrant. The courts below granted relief based upon the analysis of the Pennsylvania Constitution set

forth in Edmunds, which rejected the federal good faith exception to the exclusionary rule (there, in the context of a defective search warrant). Edmunds is binding precedent and the Commonwealth has not challenged its validity here. Nor has the Commonwealth offered any meaningful distinction of Edmunds in constitutional terms. The courts below were correct that Edmunds controls the outcome in such circumstances.

Article I, Section 8 explicitly addresses seizures of persons (here, by an arrest) no less than searches of a person's houses, papers or possessions:

Security from searches and seizures. The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

PA. CONST. art. I, § 8. The established remedy for illegal seizures and searches, in criminal cases, is exclusion of the fruits of the illegal police conduct – under both the Fourth Amendment and under Article I, Section 8. That general rule of exclusion, of course, is subject to numerous exceptions. The U.S. Supreme Court recognized a new such exception to the Fourth Amendment's exclusionary rule in United States v. Leon, 468 U.S. 897 (1984). Leon held that, where a police officer conducts a search in objective good faith reliance upon a search warrant duly issued by a magistrate or judge, the Fourth Amendment does not require exclusion of evidence found pursuant to the warrant, even if it is later determined that there was no probable cause for the warrant to issue. 468 U.S. at 926. The High Court considered that the deterrence goal of the federal exclusionary rule based on the Fourth Amendment would not be served by applying it in circumstances where officers have properly relied on a subsequently invalidated search warrant. Id. In its subsequent decision in Herring, 555 U.S. 135, the

High Court considered the good faith exception in an expired arrest warrant context, ultimately adopting a conditional application of the good faith exception, turning upon the reason why the expired warrant was erroneously deemed valid, *i.e.*, whether the error in failing to purge the warrant was systemic or not.

This Court's consideration and rejection of the Leon good faith exception as a matter of state constitutional law in Edmunds did not turn upon the nature of the intrusion – *i.e.*, whether a search was at issue or a seizure was at issue – but rather upon the perceived values furthered by the exclusionary rule applied under Article I, Section 8 of Pennsylvania's Constitution. By way of background, Edmunds was convicted of drug related charges, after the admission into evidence of marijuana seized at his property pursuant to a search warrant, a warrant later determined to have been unsupported by probable cause because the warrant affidavit "failed to set forth with specificity the date upon which the anonymous informants observed the marijuana." 586 A.2d at 888. The trial court denied Edmunds's motion to suppress on the basis of Leon, concluding that the officers executing the warrant had acted in good faith by relying on that warrant to conduct the search. On appeal, the Superior Court adopted the trial court's reasoning and affirmed in a divided panel decision. Commonwealth v. Edmunds, 541 A.2d 368 (Pa. Super. 1988).

This Court reversed, rejecting Leon as an Article I, Section 8 matter, and holding that Section 8 "does not incorporate a 'good faith' exception to the exclusionary rule." Edmunds, 586 A.2d at 905-06. The Edmunds Court examined the question by considering: (1) the text of the provision of the Pennsylvania Constitution; (2) the history of the provision, including the caselaw of this Commonwealth; (3) relevant caselaw from other jurisdictions; and (4) policy considerations, "including unique issues of state and local concern, and applicability within modern Pennsylvania jurisprudence."

Id. at 895. After applying this state constitutional paradigm – now generally known as an “Edmunds analysis” – to the facts at hand, the Court concluded that the evidence seized from Edmunds’s property based on an invalid search warrant should have been suppressed. Id. at 905-06. Edmunds turned on a determination that, under Article I, Section 8, the exclusionary rule in Pennsylvania serves other values besides deterrence; it also vindicates an individual’s right to privacy:

[G]iven the strong right of privacy which inheres in Article 1, Section 8, as well as the clear prohibition against the issuance of warrants without probable cause, or based upon defective warrants, the good faith exception to the exclusionary rule would directly clash with those rights of citizens as developed in our Commonwealth over the past 200 years. To allow the judicial branch to participate, directly or indirectly, in the use of the fruits of illegal searches would only serve to undermine the integrity of the judiciary in this Commonwealth. From the perspective of the citizen whose rights are at stake, an invasion of privacy, in good faith or bad, is equally as intrusive. This is true whether it occurs through the actions of the legislative, executive or the judicial branch of government.

Id. at 901 (internal citations omitted). Therefore, the exclusionary remedy was deemed available even in a situation where police acted in good faith.

The Commonwealth, in making its argument that the physical evidence here should not be suppressed, has not engaged in a state constitutional analysis under the Edmunds paradigm, nor has the Commonwealth argued that Edmunds itself should be modified or rejected.⁴ Indeed, the Commonwealth cites to Edmunds only once in its

⁴ This author has questioned the supporting analysis and therefore the correctness of the specific result in Edmunds, on the Edmunds Court’s asserted grounds that Pennsylvania’s exclusionary rule serves a different purpose than the Fourth Amendment and is not simply deterrence-based. Specifically, I have expressed concern that the Edmunds Court, while adopting a state constitutional review paradigm that required consideration of the history of Article I, Section 8, failed to recognize or (...continued)

three-page argument, while arguing that this Court's failure to adopt a good faith exception to the exclusionary rule there "does not lead to the exclusion of evidence in every case where the police act on a mistaken belief that they are entitled to seize certain evidence." Commonwealth's Brief at 11. Of course, every decision must be read against its facts, and it may well be true that this Court will come to recognize exceptions to various general rules in the Article I, Section 8 area – no less than in other areas of the law. But the Commonwealth's position begs the question: the task for the Commonwealth is to articulate a principled reason, consonant with the Edmunds Court's existing articulation of the purpose of the exclusionary rule under Article I, Section 8, why we should not apply the exclusionary remedy here.

The Commonwealth has not explained why exclusion of the evidence seized here, unlike the exclusion of the evidence seized in Edmunds, would not vindicate the privacy interests of Pennsylvania citizens, or would forward some other value that was not at issue or sufficiently acknowledged in Edmunds. Indeed, under the rationale articulated in Edmunds, there is at least as much reason to afford an exclusionary

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account for the Court's cases predating Mapp v. Ohio, 367 U.S. 643 (1961), which had rejected the exclusionary rule as an Article I, Section 8 remedy. See Commonwealth v. Russo, 934 A.2d 1199, 1207-09 (Pa. 2007) (explaining history and prior cases).

Nevertheless, despite my continuing reservations respecting the accuracy and completeness of the state constitutional analysis of the question presented in Edmunds, I have expressed general agreement with the Edmunds state constitutional law paradigm, and I have employed it often, see, e.g., Russo; Theodore v. Delaware Valley Sch. Dist., 836 A.2d 76 (Pa. 2003) (Article I, Section 8 in school search context); Commonwealth v. Glass, 754 A.2d 655 (Pa. 2000) (Article I, Section 8 in anticipatory search warrant context), and in areas implicating constitutional provisions other than Article I, Section 8. See Pap's A.M. v. City of Erie, 812 A.2d 591 (Pa. 2002) (Article I, Section 7 in freedom of expression context).

remedy in the expired arrest warrant scenario as in the defective search warrant scenario. The mistake in Edmunds was made by the magistrate assessing probable cause; the executive branch (there, embodied by the police executing the warrant) did nothing wrong. This case involves an arrest warrant, not a search warrant, but the defect leading to suppression below did not involve a mistake in the judicial issuance of a warrant without probable cause.⁵ Rather, the lapse arose somewhere in the executive branch -- not with the arresting officer, but with whoever was responsible for purging executed warrants in a timely fashion.

Thus, this case, unlike Edmunds, involves a situation where application of the exclusionary rule would not only serve the same privacy-based function it was deemed to serve in Edmunds, but also would serve some generalized deterrence function. In this regard, it is worth noting that appellee already suffered the authorized compromise of his liberty *via* a prior arrest on the same warrant. Application of the exclusionary rule may encourage the executive to adopt more efficient measures to purge executed arrest warrants and thereby to better ensure the privacy rights of Pennsylvanians.

Finally, we are unconvinced by the Commonwealth's argument that this Court's decision in Smith, 995 A.2d 1143, directs that the evidence seized from appellee pursuant to his arrest under an expired warrant should be deemed admissible. Smith posed no question sounding under Article I, Section 8, much less did it pose the question of whether the Edmunds Court's rejection of a good faith exception to the exclusionary rule under Section 8 should be recognized in a scenario involving an illegal arrest pursuant to an expired arrest warrant. Rather, Smith involved a question -- apparently raised exclusively under federal law, since the opinion never indicates that

⁵ We recognize that appellee would contest the probable cause in the warrant, but for purposes of our controlling analysis, we may assume the warrant was valid.

the decision was premised upon, or rendered under, our state charter – involving alleged ineffective assistance of counsel in failing to challenge a confession on grounds that it was the fruit of an illegal arrest.

In Smith, while investigating a murder, and executing a related search warrant at Smith's home, police arrested Smith on what they believed to be an outstanding warrant for an unrelated sexual assault; the arresting officers were not aware that the arrest warrant had already been served and the assault charge dismissed. 995 A.2d at 1151. While in custody after the arrest, Smith waived his Miranda rights and told the police he met the murder victim the evening of the murder, and that they later parted ways, but then Smith invoked his right to remain silent and requested counsel. Afterwards, the police learned that their warrant based on the assault charge was invalid, and they arrested Smith a second time on the murder charge. Smith eventually indicated he was willing to waive his Miranda rights, he did waive them, and then gave a tape-recorded confession admitting to the murder. Id. at 1152-53.

This Court held that Smith's initial arrest was illegal but that his confession was admissible at trial, and therefore rejected Smith's derivative ineffectiveness claim. The Court noted that not all confessions or admissions secured from an illegally arrested person are *per se* inadmissible as trial evidence. Id. Whether such evidence is admissible, we noted, depends on the facts in each case, considering the following factors: "(1) whether Miranda warnings were given; (2) the 'temporal proximity of the arrest and the confession'; (3) 'the presence of intervening circumstances'; and, (4) 'the purpose and flagrancy of the official misconduct.' The voluntariness of the statement is, of course, a threshold requirement, and the confession must also be 'free of any element of coerciveness due to the unlawful arrest.'" Id. at 1152 (quoting McFeely, 502

A.2d at 170; Commonwealth v. Bogan, 393 A.2d 424, 427 (Pa. 1978)).⁶ Considering the timing and circumstances, we concluded that Smith’s “offer to talk to police was not elicited by police conduct.” Id. at 1153. Moreover, we noted, the “police did not intend to use the expired warrant to effectuate appellant’s arrest for the instant crime; rather, due to an administrative error, they mistakenly believed the warrant was still outstanding. . . . Thus, the warrant under which appellant was arrested, although invalid, was not fabricated to secure appellant’s arrest in order to coerce his confession. Accordingly, appellant’s confession was voluntarily given and was admissible at trial.” Id. (internal citations omitted).⁷

⁶ Neither the McFeely case nor the Bogan case contain any indication that the Court was applying other than Fourth Amendment law.

⁷ Mr. Justice Saylor filed a concurring and dissenting opinion in Smith which, on the confession/attenuation doctrine issue discussed in the text above, supported the Court’s application of the doctrine in light of precedent from the U.S. Supreme Court. Id. at 1175 (Saylor, J., concurring and dissenting) (citing Brown v. Illinois, 422 U.S. 590 (1975)). Justice Saylor added, however, that as a matter of pure logic, it seemed to him that the Brown factors should apply differently in Pennsylvania than in a federal forum because “the policies underlying the exclusionary rule are substantially broader under Pennsylvania jurisprudence than under federal Fourth Amendment law.” Id. (comparing Edmunds with Leon). Justice Saylor further stated that “it seems somewhat artificial to say that the causal chain between an illegal arrest and an ensuing subsequent confession is ‘broken’ and the taint ‘purged,’ where the defendant remains subject to the illegal detention, and in the absence of intervening circumstances beyond the mere giving of Miranda warnings.” Id. Nevertheless, Justice Saylor recognized, the U.S. Supreme Court had established the prevailing attenuation test, and this Court followed it in McFeely. Justice Saylor ended his point by noting that he “would prefer a more open acknowledgment of the growing unwillingness at the federal and state levels to apply the exclusionary rule in the absence of intentional or, at least grossly negligent, police conduct.” Id.

Mr. Justice Baer filed a concurring opinion in Smith, joining the Smith majority, but writing to, *inter alia*, the question of the admissibility of Smith’s confession, in order to address the points made by Justice Saylor. Justice Baer stated that the exclusionary rule should not preclude admission of Smith’s confession because police had (...continued)

The attenuation and voluntariness questions at issue in Smith, posing questions involving the application of federal law, simply are not involved here. Instead, in this case, we must determine whether the officer's "good faith" belief that he was arresting appellee on a valid warrant defeats the application of the exclusionary remedy recognized by Edmunds, interpreting the Pennsylvania Constitution. Smith does not remotely support, much less command, recognition of a good faith exception under the existing Article I, Section 8 construct. We therefore affirm the Superior Court's order affirming the trial court's suppression of the physical evidence seized incident to appellee's illegal arrest.

Order affirmed. Jurisdiction relinquished.

Messrs. Justice Saylor, Eakin and Baer and Madame Justice Todd join the opinion.

Mr. Justice McCaffery files a dissenting opinion in which Mr. Justice Stevens joins.

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independent probable cause to make a warrantless arrest at the time they acted on the expired warrant. Id. at 1173 (Baer, J., concurring). Justice Baer also emphasized that the decision in Smith should not be read as restricting the application of the exclusionary rule in a proper case, and that he was "opposed to any erosion of the use of this invaluable remedial tool, when appropriate, to preserve our citizens' right to be free from coercive state interference into their lives and affairs." Id. at 1174.