

STATEMENT
OF
REP. CHRIS R. WOGAN
ON
HOUSE BILL 1502

HOUSE JUDICIARY COMMITTEE

JULY 26, 1993

Good morning. To start, I would like to thank our Chairman, Rep. Caltagirone, for scheduling this public hearing in order to allow interested citizens and groups to express their opinions on House Bill 1502.

House bill 1502 has 55 listed co-sponsors in the lower chamber of our General Assembly, as well as several additional co-sponsors who will be officially added when the bill receives a new printer's number.

House Bill 1502 is a proposed amendment to Article I Section 8 of the Pennsylvania Constitution, which would establish a good faith exception to the exclusionary rule in Pennsylvania, when the evidence in question has been obtained in reasonable reliance upon a search warrant issued by a neutral and detached magistrate on issuing authority, but later invalidated by a court.

This bill, if passed by two consecutive sessions of the General Assembly, and if approved by the voters of the Commonwealth in a referendum, would become part of Article I Section 8 of our Pennsylvania Constitution. It would then bring Pennsylvania into line with United States v. Leon 468 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. Zd. 677, the 1984 case in which the U. S. Supreme Court held that the Fourth Amendment to the U.S. Constitution allowed a good faith exception to the exclusionary rule.

The Court examined the origin and purposes of the Fourth Amendment

and held that the question of whether the remedy to safeguard Fourth Amendment rights through its deterrent effect, must be resolved by weighing the costs and benefits of preventing the use in the prosecution's case in chief of inherently trustworthy evidence.

The Court continued by noting that the indiscriminate application of the exclusionary rule - which impedes the ability of the criminal justice system to ascertain the truth and allows some guilty defendants to go free - may well generate disrespect for the law and the administration of justice.

Unfortunately, in my opinion the Pennsylvania Supreme Court in Commonwealth v. Edmunds 586 A. 2d 887 (1991) held that it would not follow Leon in allowing a good faith exception to the exclusionary rule in Pennsylvania. It did this despite the fact that the language of Article I Section 8 of the PA Constitution uses essentially the same language as is contained in the Fourth Amendment to the U.S. Constitution.

While it is true that the highest court in each state is free to give more protection to those accused of crimes than that required by the federal constitutional interpretation, it is equally true that the citizens and their legislature are also free to utilize the state constitution's amendment process to adopt a good faith exception to the exclusionary rule, a good faith exception - in accordance with the terms set by United States v. Leon.

As the late Justice James McDermott wrote in his dissenting opinion in Edmunds,

"United State v. Leon, 468 U.S. 897 (1984) does not open the gates to unauthorized search, it does not dissolve the need for probable cause. It simply and properly shifts the responsibility for determining probable cause to a neutral magistrate and frees the police of his or her mistake the police cannot search on a whim. They must present their case to a neutral magistrate. The facts they present must be true, the magistrate must act within his bounds, and , as the final test, the police must employ their experience in recognizing whether a warrant is illegal despite the authorization of the magistrate. All of these contentions remain alive and subject to scrutiny at a suppression hearing."

House bill 1502 then if adopted, would clearly not result in the diminution of the right of our citizens to be secure in their persons, houses and possessions from unreasonable searches and seizures.

It would enhance the ability of our courts and juries to find the truth by allowing evidence to be introduced at trial. This search for the truth is given short shrift by those who argue for the inflexible and inexorable application of the exclusionary rule. The social costs of this, I believe have been very great

indeed. To paraphrase Justice McDermott - it has forced law enforcement authorities to ignore mountains of illegal contraband that were otherwise palpable indicia of guilt.

Need I mention how much of these ignored " mountains of contraband" consist of narcotics and drug-related items - mountains which grow larger with the passage of time.

I believe that we have an obligation, especially to our younger Pennsylvanians, the boys and girls who have not yet been exposed to the real plague of our era - drug trafficking - to take every measure that we can consistent with a democratic society that recognizes basic civil liberties, to ensure that this scourge which has ravaged our young for at least a quarter of a century, becomes but a distant through unpleasant memory.

The adoption of House Bill 1502 would be a solid step in the right direction.