



CITY OF PHILADELPHIA

POLICE DEPARTMENT
HEADQUARTERS, FRANKLIN SQUARE
PHILADELPHIA PENNSYLVANIA 19106

RICHARD NEAL
Commissioner

July 23, 1993

Honorable Thomas R. Caltagirone
Chairman
House Judiciary Committee
106 South Office
Harrisburg, PA 17120

Dear Chairman Caltagirone:

RE: House Bill 1502

The purpose of this correspondence is to seek your support as well as the support of the Judiciary Committee for House Bill 1502. This amendment would amend the State Constitution to include a "good faith" exception for evidence seized by police where they acted in a reasonable manner after the approval of a search warrant by a neutral and detached judicial officer where the search warrant is later ruled invalid.

This exception to the exclusionary rule was established by the United States Supreme Court in United States v. Leon 468 US 897, 104 S.Ct. 3405, 82 L. Ed. 2d. 677 (1984). However, the Pennsylvania Supreme Court ruled that the use of such an exception would violate the State Constitution in the case of Commonwealth v. Edmonds 526 Pa. 374, 586 A.2d 887 (1991). It is important to note that the language of the Fourth Amendment to the United States Constitution and Article I, Section 8 of Pennsylvania's Constitution contain substantially the same language.

The purpose of the amendment to House Bill 1502 would be to allow criminal prosecutions to continue based upon an officer's good faith reliance upon a neutral and detached judicial officer's approval of the search warrant. This removes the application of the exclusionary rule in situations where the officers have acted appropriately in reliance upon a neutral determination. It must be remembered that the scope of this exception applies to matters involving search warrants where it may be subsequently viewed invalid, such as where there is a lack of probable cause or insufficient description. Thus, it is also important to identify what this exception does not cover. It does not relate to or

legitimize in any way improper execution of a search warrant where constitutional violations can occur. As the Leon Court also noted, this "good faith" exception does not protect against police misconduct in obtaining a search warrant where false information is given, nor would it be a shield where acting in reliance on a search warrant, approved by a neutral and detached judicial officer, could not be viewed as being "objectively reasonable".

Finally, the purpose of the exclusionary rule is to deter police misconduct. It was not designed to overcome errors of judicial officers. Thus, adoption of a "good faith" exception to the exclusionary rule in Pennsylvania does not subvert the purpose of this judicially created remedy. It creates a reasonable balance in evaluating the legal sufficiency of evidence obtained by law enforcement in an otherwise proper manner where their reliance to act is supported by judicial approval.

Your support in favor of this legislation, as well as the support of your colleagues on the Judiciary Committee, would be greatly appreciated. On behalf of the Philadelphia Police Department, I would like to thank you for the opportunity to express our opinion on this subject matter.

If you or your staff have any questions, please contact David Domzalski, Esquire, Police Counsel, at (215) 592-5899.

Sincerely,

Thomas M. Sullivan
FOR RICHARD NEAL
Police Commissioner

RN:ms

cc: Honorable David W. Heckler
Honorable Kathy M. Manderino
Honorable Gregory Fajt
Honorable Babette Josephs
Honorable Michael C. Gruitza
Honorable Frank LaGrotta
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