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United States vs. Peltier - The Good Faith Belief of the Police Officer

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INTRODUCTION

The retroactive application of a ruling in a criminal case has been before the United States Supreme Court repeatedly, but not until United States v. Peltier has the court based a decision on the nature of the Fourth Amendment exclusionary rule instead of on traditional retroactivity principles. In concluding that the Court's previous decision in Almeida-Sanchez v. United States should not be applied to cases pending on appeal on the date that the decision was announced, the Court has apparently recognized a new test of retroactivity for Fourth Amendment rulings and has laid the groundwork for a new barrier to a defendant's motion to suppress.

The ruling sought to be applied retroactively was the holding that a warrantless automobile search conducted about 25 air miles from the Mexican border by border patrol agents acting without probable cause contravenes the Fourth Amendment prohibition against un-

2. 422 U.S. 531 (1975).
3. Mr. Justice Rehnquist, speaking for the Court, states that whenever the Court has formulated a new constitutional principle involving the exclusionary rule, that new principle is not applied retroactively because of the purposes behind the exclusionary rule. 422 U.S. at 535.
Mr. Justice Brennan, dissenting, explains this retroactivity procedure as a result of the sudden change in the law as enunciated in the new constitutional principle. It is a matter of circumstance that the exclusionary rule is involved at all. 422 U.S. at 544.
reasonable searches and seizures.\(^5\) Four months before this decision, defendant Peltier was stopped in his automobile about 70 air miles from the Mexican border by a roving border patrol, and three plastic garbage bags containing 270 pounds of marihuana were found in the trunk of his car by Border Patrol Agents who were acting without probable cause.\(^6\) The similarities with the *Almeida-Sanchez* search were apparent and as Mr. Justice Douglas indicated, either case could have resulted in the new ruling.\(^7\)

The *Almeida-Sanchez* ruling was merely an application of the Fourth Amendment standards enunciated fifty years earlier in *Carroll v. United States*,\(^8\) permitting the stop and search of a moving automobile without a warrant provided there is probable cause.\(^9\) Mr. Justice White, speaking for the *Almeida-Sanchez* dissent,\(^10\) interpreted the prohibition against "unreasonable" searches and seizures as providing a flexible standard of probable cause and emphasized 8 U.S.C. § 1357(a)(3)\(^11\) interpreting it as allowing border area searches by roving patrol with neither warrant nor probable cause.

In *Peltier*, the Court again dealt with the considerations raised

5. Id. at 273.
6. 422 U.S. at 532. This search clearly falls under the *Almeida-Sanchez* standard as conceded by the Government in the Court of Appeals.
7. Id. at 2320.
   It is largely a matter of chance that we held the Border Patrol to the command of the Fourth Amendment in *Almeida-Sanchez* rather than in the case of this defendant. Equal justice does not permit a defendant's fate to depend upon such a fortuity.
10. It is interesting to note that the *Almeida-Sanchez* dissent comprises the Peltier majority (with the inclusion of Mr. Justice Powell). Four of these justices who do not wish to apply the *Almeida-Sanchez* ruling retroactively, in fact, disagree with that ruling. 413 U.S. at 285-99. And note that the fifth justice, J. Powell, believes that these searches are unconstitutional only because a warrant is not required, yet does agree with the others that the traditional standard of probable cause is not required. 413 U.S. at 289.
   Any officer or employee of the Service ... shall have power without warrant—within a reasonable distance from any external boundary of the United States, to board and search for aliens any ... vehicle ....

The majority construed this statute so as to render it constitutionally consistent with their decision in that it does not eliminate the probable cause requirement but only the warrant requirement. 413 U.S. at 272.
in the majority and dissenting opinions in Almeida-Sanchez to determine if these same considerations required the retroactive application of that ruling.

**Retroactivity and the Exclusionary Rule**

In the Court of Appeals, the retroactivity issue was resolved by applying the "sharp break" test of whether a new doctrine had been articulated in Almeida-Sanchez, the case sought to be applied retroactively.\(^\text{12}\) By requiring the new ruling to constitute a sharp break in the line of earlier authority, the court prevented the injustice that would occur if it merely affirmed established constitutional principles yet did not apply the same principles to cases on appeal at that time. Thus a sudden change to new law is required. Finding no sudden change in the law, the Court of Appeals interpreted Almeida-Sanchez as reaffirming well established Fourth Amendment standards and resolved the issue in Peltier's favor.\(^\text{13}\)

The Court of Appeals dissent, however, concluded that Almeida-Sanchez did indeed establish new doctrine because the decision overruled a consistent line of Courts of Appeals decisions and disrupted a long accepted and widely relied upon administrative practice.\(^\text{14}\) Accordingly, the dissent stated that the issue of retroactivity should have been decided in accordance with the standards summarized in Stovall v. Denno.\(^\text{15}\)

The Supreme Court majority could have adopted the position of the dissent in the Court of Appeals decision that a "sharp break" with past decisions had occurred and could have resolved the issue

\(^{12}\) See *e.g.*, Hanover Shoe Inc. v. United Shoe Manufacturing Corp., 392 U.S. 481, 499 (1968) ("a sharp break in the line of earlier authority or an avulsive change which caused the current of the law thereafter to flow between new banks"); Desist v. United States, 394 U.S. 244, 248 (1969) ("a clear break with the past"); Milton v. Wainright, 407 U.S. 371, 382 n.2 (1972) ("a sharp break in the web of the law").

\(^{13}\) "(Respondent) is entitled to the rule announced in Almeida-Sanchez, not because of retroactivity; but because of Fourth Amendment principles never deviated from by the Supreme Court." 500 F.2d 985, 989 (9th Cir. 1974).

\(^{14}\) 500 F.2d at 991-93. Border patrol agents had conducted roving searches pursuant to Congressional authorization, 8 U.S.C. 1357(a) (3) and administrative regulation 8 CFR § 287.1 (1973), which according to the dissenters had been continuously upheld until the Supreme Court's decision in Almeida-Sanchez.

\(^{15}\) 388 U.S. 293, 297 (1967).

The criteria guiding resolution of the question implicate (a) the purpose to be served by the new standards, (b) the extent of reliance by law enforcement authorities on the old standards, and (c) the effect on the administration of justice of a retroactive application of the new standards.
with reference to the Stovall standards without ever reaching an exclusionary rule issue. If this approach had been taken, discussion of 8 U.S.C. 1357(a) (3) and the individual Courts of Appeals cases would have been relevant only as to the then existing state of the law for purposes of determining the narrow “sharp break” issue, and not for the purpose of determining the justifiable good faith belief of the border patrol agents.

Comparison of the state of the law before and after a Supreme Court ruling appears to be no longer determinative of the retroactivity of that ruling, at least in Fourth Amendment cases. This “sharp break” test now serves a different function; it is the measure of the arresting officer’s justifiable belief in the legality of his or her actions.

The Court, although apparently believing that a sharp break had occurred, stated that in Fourth Amendment retroactivity cases the focus should be on the purposes served by the exclusionary rule:

Whether or not the exclusionary rule should be applied to the roving border patrol search conducted in this case, then, depends on whether considerations of either judicial integrity or deterrence of Fourth Amendment violations are sufficiently weighty to require that the evidence obtained by the border patrol in this case be excluded.

16. United States v. Peltier, 422 U.S. at 531, 539-540. The dissent takes issue with the Court’s interpretation of 8 U.S.C. 1357(a) (3): the statute “only authorizes searches of vehicles ‘without warrant . . . within a reasonable distance of any external boundary’; nothing in the statute expressly dispenses with the necessity for showing probable cause.”

There is also considerable disagreement with the Court’s statement that roving border patrol searches under this statute have been upheld repeatedly against constitutional attack:

For the approval by the Courts of Appeals of this law enforcement practice was short-lived, less than unanimous, irreconcilable with other rulings of the same courts, and contrary to the explicit doctrine of this Court in Carroll, supra, as reaffirmed in Brinegar v. United States, 338 U.S. 160, 164, 69 S. Ct. 1302, 1305, 93 L. Ed. 1879 (1949), and other cases. United States v. Peltier, supra at 547.

17. United States v. Peltier, 422 U.S. at 539-540. See Mr. Justice Powell’s concurring opinion in Almeida-Sanchez v. United States, 413 U.S. at 278, and the dissenting opinion of Mr. Justice White, 413 U.S. at 285-99.

18. Evidence obtained in an illegal search and seizure is inadmissible. This rule serves two primary purposes—to deter lawless police conduct and to enable the judiciary to avoid the taint of this lawless conduct if committed. Mapp v. Ohio, 367 U.S. 643 (1961).

19. 422 U.S. at 538. The approach in this retroactivity case is quite simi-
In examining the imperative of judicial integrity, the Court noted that although judicial integrity plays a role in establishing a new constitutional ruling such as *Mapp v. Ohio*, it is not concerned with the retroactive application of that ruling.\textsuperscript{20} The Court is not tainted by lawless police conduct if the police themselves were acting in good faith compliance with the then prevailing constitutional norms,\textsuperscript{21} nor is lawless police conduct deterred in such a situation:

The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right. By refusing to admit evidence gained as a result of such conduct, the courts hope to instill in those particular investigating officers, or in their future counterparts, a greater degree of care toward the rights of an accused. Where the official action was pursued in complete good faith, however, the deterrence rationale loses much of its force.\textsuperscript{22}

From this exclusionary rule examination, it appears that Fourth Amendment rulings can never be applied retroactively because the deterrence rationale is satisfied by the ruling itself. Retroactive application only benefits one defendant and has no deterrent effect on future police conduct. It follows that since lawless police conduct is not deterred and the imperative of judicial integrity is not offended when the law enforcement official acts in good faith, the entire class of Fourth Amendment cases can not be applied retroactively.\textsuperscript{23} The significance of the "sharp break" test in this area has

\textsuperscript{20} It is particularly the application of this exclusionary rule purpose in which Justices Brennan, Marshall and Douglas have disagreed with the current majority of the court. The integrity of the judiciary is offended if illegally seized evidence is admitted. The good faith belief of the police officer is irrelevant to the greater issue of judicial involvement in an illegal search and seizure. See *Harris v. New York*, 401 U.S. 222, 231-32 (1971) (Brennan, J., dissenting); *United States v. Calandra*, 414 U.S. 338, 355 (1974) (Brennan, J., dissenting).


\textsuperscript{22} 422 U.S. at 539 quoting from *Michigan v. Tucker*, 417 U.S. 433 (1974), which concerns the good faith reliance of police officers on the Court's decision in *Escobedo v. Illinois*, 378 U.S. 478 (1964), particularly focusing on defendant's opportunity to have retained counsel with him during the interrogation if he chose to do so. 417 U.S. at 447.

\textsuperscript{23} 422 U.S. at 547. Mr. Justice Brennan, dissenting:

The Court substitutes at least as respects the availability of the exclusionary rule in cases involving searches invalid under the Fourth Amendment, a pre-presumption against the availability of decisions of this Court except prospectively. The substitution discards not only the 'sharp break' determinant but also the equally established principle that prospectivity 'is not automatically deter-
been relegated to the determination of whether the law enforcement official has acted with a good faith belief in the legality of his or her conduct.

The Court's analysis of the exclusionary rule reaches beyond this appellate view of the issue of retroactivity and into the broader realm of daily police conduct. The Court has given no indication that an inquiry into the good faith belief of the police officer will only be relevant in a retroactivity determination as involved here. Statements near the end of the Court's opinion are worded very broadly as if applying to any exclusionary rule application.

"If the purpose of the exclusionary rule is to deter unlawful police conduct, then evidence obtained from a search should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge that the search was unconstitutional under the Fourth Amendment."24

Again in the Court's final note,25 Justice Rehnquist mentions the dissent's claim that the good faith belief of the police officer must now be determined by the presiding judge at the motion to suppress. This claim should have been dispelled; instead, Justice Rehnquist indicated that consideration of such an issue is not inappropriate since courts now spend ""substantial time addressing issues that do not go to a criminal defendant's guilt or innocence.""26

CONCLUSION

The Court's specific holding was that the Almeida-Sanchez decision would not be applied retroactively to defendant's case even though it was pending on appeal on the date that the decision was announced. In arriving at this conclusion, the Court has determined that the primary focus in Fourth Amendment retroactivity

24. 422 U.S. at 542.
25. Id. at 542, n.13.
26. Also note the Court's response to the dissent's claim that the Almeida-Sanchez conviction should have been upheld because the officers there were acting in good faith:

Nor did the Government in Almeida-Sanchez urge upon us any consideration of exclusionary rule policy independent of the merits of the Fourth Amendment question which we decided adversely to the Government. Id. at 542 n.12.
determinations should be directed to the purposes of the exclusionary rule and not to any old law-new law considerations. These considerations in a Fourth Amendment context are relevant only as to the factual issue of the good faith belief of the law enforcement officials.

Since the Court draws no distinction between its application of the exclusionary rule in the determination of retroactivity and its application of the rule in a more general context, it appears that exclusionary rule principles enunciated in one context may be applied in another. Stated differently, once an exclusionary rule principle is formulated it attaches to the rule and will be applied whenever the rule is applied. The new principle formulated in United States v. Peltier is that the purposes of the exclusionary rule are not sufficiently furthered when the law enforcement official acts with a good faith belief that his or her conduct is within the bounds of the presently existing law. When this principle is applied to the exclusionary rule in a motion to suppress the subtle importance of the Court's decision is evident: evidence obtained from a search should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment.

Although this new principle comes from a retroactivity case, the Court appears to be convinced that the exclusionary rule should no longer be applied in situations where the arresting officer has done all that could be expected. This issue is presented in two cases presently before the Court and these do not provide a retroactivity cover to shield the Court's abandonment of the exclusionary rule in situations where the police officer has acted in good faith.27

27. Stone v. Powell, 507 F.2d 93 (1974) cert. granted. No. 74-1055, June 30, 1975; Rice v. Wolff, 388 F. Supp. 185 (1974) cert. granted, No. 74-1222, June 30, 1975. In Stone v. Powell, the defendant Powell was convicted of second-degree murder by the Superior Court of San Bernardino County, California, on evidence obtained from a search incident to an arrest for a violation of a local vagrancy ordinance subsequently ruled unconstitutional. Stone v. Powell, supra at 94. Thus the issue before the Supreme Court is whether the exclusionary rule should be applied to suppress fruits of a reasonable search incident to arrest based upon probable cause for violation of a then valid ordinance.

In Wolff v. Rice, the defendant, Rice, was convicted of first-degree murder in connection with the bombing death of a police officer, by the District Court of Douglas County, Nebraska, on evidence obtained from a search of Rice's home pursuant to an invalid search warrant. Rice v. Wolff, supra at 188. The issue before the Court is whether the Fourth Amendment exclusionary rule should be modified to admit evidence obtained by the good faith conduct of the police.
By emphasizing the deterrence rationale of the exclusionary rule, it is clear that law enforcement officials are not deterred from lawless conduct if they can not reasonably be expected to know that their conduct violates the Fourth Amendment. But this deterrent effect is not the only purpose served by excluding illegally seized evidence; there is another consideration—the imperative of judicial integrity. It is the Court and not the police officer who permits illegally seized evidence to be used against the defendant, and it is this principle that seems to have been lost somewhere along the path from *Mapp* to *Peltier*. Those who are not convinced that the exclusionary rule does not serve a valid purpose can take solace in the possibility that the criminal may still be able to go free if the constable should have recognized his blunder.  

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*28. J. Brennan, dissenting, "If a majority of my colleagues are determined to discard the exclusionary rule in Fourth Amendment cases, they should forthrightly do so, and be done with it." 422 U.S. at 539.*