



JACKIE LACEY
DISTRICT ATTORNEY

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

ONE MINUTE BRIEF

COPYRIGHT © 2019 LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE. ALL RIGHTS RESERVED. MAY BE REPRODUCED FOR NON-COMMERCIAL PROSECUTORIAL, LAW ENFORCEMENT AND EDUCATIONAL PURPOSES ONLY. 1MB@da.lacounty.gov

NUMBER: 2019-16 **DATE:** 07-15-19 **BY:** Devallis Rutledge **TOPIC:** Exclusionary Checklist

ISSUE: When is the Fourth Amendment exclusionary rule inapplicable, despite errors?

*“[E]xclusion of evidence **does not automatically follow**” from errors; the exclusionary rule **“is subject to exceptions.”** *Davis v. US* (2011) 564 US 229, 244. For example...*

- **Statutory violation.** Non-compliance with state statutes/regulations does not trigger the Fourth Amendment exclusionary rule. *Virginia v. Moore* (2008) 553 US 164, 172-76.

- **Miranda non-compliance.** Questioning outside *Miranda* does not taint physical evidence so revealed. *US v. Patane* (2004) 542 US 630, 642.

- **Foreign officials.** No exclusion based on search or seizure outside the US by foreign officials. *US v. Verdugo-Urquidez* (1990) 494 US 259, 274-75.

- **Private parties.** No exclusion based on searches or seizures by private individuals, not acting as government agents. *US v. Jacobsen* (1984) 466 US 109, 119-20.

- **Correctional inspections.** No Fourth Amendment protection for inmates. *Hudson v. Palmer* (1984) 468 US 517, 536 (prison); *Block v. Rutherford* (1984) 468 US 576, 591 (jail).

- **“Standing.”** The exclusionary rule may only be invoked by one whose own personal rights were allegedly violated. *Rakas v. Illinois* (1978) 439 US 128, 130, fn. 1.

- **Causation.** The error must have been the *proximate cause* of discovery of the evidence. *Hudson v. Michigan* (2006) 547 US 586, 592.

- **Attenuated taint.** An independent, intervening act between the error and discovery of the evidence *breaks* the chain of causation. *Utah v. Strieff* (2016) 136 S.Ct. 2056, 2061.

- **Independent source.** No exclusion despite error if officials had another, independent source of the evidence. *Costello v. US* (1961) 365 US 265, 280.

- **Inevitable discovery.** No exclusion if evidence was improperly found, if it would inevitably have been found later by lawful means. *Nix v. Williams* (1984) 467 US 431, 443.

- **Objective justification.** An officer's mistaken *subjective* grounds for his/her actions do not invalidate *objectively justifiable* conduct. *Whren v. US* (1996) 517 US 806, 812-14.
- **Good faith.** An officer's objectively-reasonable conduct eliminates the *deterrence* rationale of the exclusionary rule. *Massachusetts v. Shepard* (1984) 468 US 981, 990-91.
- **Suspect's mistake of fact.** No exclusion for reliance on suspect's mistaken assertion that he is subject to warrantless search. *In re Jeremy G.* (1998) 65 Cal.App.4th 553, 556.
- **Police mistake of fact.** A reasonable mistake of fact that, if true, would have justified police actions, negates application of the rule. *Illinois v. Rodriguez* (1990) 497 US 177, 188.
- **Police mistake of law.** Likewise, a reasonable mistake of law does not trigger the exclusionary rule. *Heien v. North Carolina* (2014) 574 US 54.
- **Mistaken identity.** A reasonable mistake as to the identity of a person whom there are grounds to detain or arrest obviates exclusion. *Hill v. California* (1971) 401 US 797, 804.
- **Mistaken location.** No exclusion where error results from a reasonable mistake as to a location to be lawfully searched. *Maryland v. Garrison* (1987) 480 US 79, 88.
- **Invalid search warrant.** No exclusion for reasonable reliance on an invalid search warrant where the defect was not obvious. *US v. Leon* (1984) 468 US 897, 922.
- **Invalid statute.** No exclusion for reasonable reliance on a statute later declared unconstitutional. *Michigan v. DeFillippo* (1979) 443 US 31, 38-40.
- **Invalid case law.** No exclusion for reasonable reliance on a precedent court decision that is subsequently overruled. *Davis v. US* (2011) 564 US 229, 249-50.
- **Judicial clerical error.** No exclusion for arrest on a recalled warrant where *court* records were incorrect due to negligent clerical error. *Arizona v. Evans* (1995) 514 US 1, 14.
- **Police clerical error.** No exclusion for arrest on a recalled warrant where *police* records were incorrect due to negligent clerical error. *Herring v. US* (2009) 555 US 135, 137.
- **Impeachment of defendant.** No exclusion. *US v. Havens* (1980) 446 US 620, 627.
- **Sentencing.** No exclusion. *People v. Brewster* (1986) 184 Cal.App.3d 921, 928.
- **Parole revocation.** No exclusion. *Scott v. PA Board P&P* (1998) 524 US 357, 368-69.
- **Probation revocation.** No exclusion. *People v. Lazlo* (2012) 206 C.A.4th 1063, 1073.
- **Trial of different case.** No exclusion. *People v. Coe* (1991) 228 Cal.App.3d 526, 535.

BOTTOM LINE: “*Suppression of evidence ... has always been our last resort, not our first impulse.*” *Hudson v. Michigan* (2006) 547 US 586, 591.

(Emphases added in quoted material.)

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.