

# ***The EXCLUSIONARY RULE***

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## **The Exclusionary Rule**

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**Evidence obtained as a result of an unreasonable search is inadmissible in a criminal proceeding.**

*Mapp v Ohio*, 367 US 643 (1961); *People v Cartwright*, 454 Mich 550 (1997).

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## The Exclusionary Rule

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The exclusionary rule prohibits the admission of evidence or testimony obtained as a direct or indirect result of an unlawful search or seizure.

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## The Exclusionary Rule - Generally

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1. The exclusionary rule is not a personal constitutional right of the aggrieved party.

Rather, it is “a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect.”

*United States v Leon*, 468 US 897 (1984).

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## The Exclusionary Rule - Generally

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2. The exclusionary rule's purpose is to deter *police misconduct* rather than judicial misconduct.

*Herring v United States*, 555 US 135 (2009).

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## The Exclusionary Rule – Purpose: Deter Police Misconduct

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The exclusionary rule did not apply to the “technical violation” of a bench-warrant court rule requiring a supporting affidavit because the error was made by the judicial officer who issued the warrant.

□ **Applying the exclusionary rule would do nothing to deter police misconduct.**

*People v Hawkins*, 468 Mich 488 (2003).

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## The Exclusionary Rule – Purpose: Deter Police Misconduct

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Defendant was arrested based on a warrant that had been quashed 17 days before, but the warrant showed as active on a database due to an error by a court clerk.

- **Applying the exclusionary rule to errors by court clerks would not deter police misconduct.**

*Arizona v Evans*, 514 US 1 (1995).

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## The Exclusionary Rule – Purpose: Deter Deliberate Misconduct

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3. The exclusionary rule's purpose is **“to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence.”**

*Herring v United States*, 555 US 135 (2009).

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## The Exclusionary Rule – Purpose: Deter Deliberate Misconduct

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A recordkeeping error in a police database was not the result of significantly culpable misconduct as to merit application of the exclusionary rule.

*Herring v United States*, 555 US 135 (2009).

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## The Exclusionary Rule - Generally

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4. The exclusionary rule applies to constitutional violations, not statutory violations.

- *People v Earls*, 477 Mich 1119 (2007) (no exclusion based on violation of the investigative subpoena statute).

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## **The Exclusionary Rule - Generally**

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- ❑ Was the violation due to the conduct of an official other than a police officer?
- ❑ Was police misconduct flagrant, deliberate, or reckless or was it merely negligent?
- ❑ Did the police violate a statute or court rule?

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## **The Exclusionary Rule - Exceptions**

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- ❑ Inevitable Discovery
- ❑ Independent Source
- ❑ Attenuation, and
- ❑ Good Faith

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## Exception: Inevitable Discovery/ Independent Source

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**Inevitable discovery** is an exception to the exclusionary rule that applies when constitutionally tainted evidence *would have been obtained* inevitably by lawful means.

The **independent source** exception applies when evidence was *actually obtained* by lawful means independent of the tainted means.

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## Exception: Inevitable Discovery

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Unconstitutionally obtained evidence is not excluded if the evidence “ultimately or inevitably would have been discovered by lawful means.”

*Nix v Williams*, 467 US 431 (1984).

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## Exception: Inevitable Discovery

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“The inevitable discovery doctrine is recognized in Michigan and may justify the admission of otherwise tainted evidence that ultimately would have been obtained in a constitutionally accepted manner.”

*People v Brzezinski*, 243 Mich App 431 (2000).

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## Exception: Inevitable Discovery

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*Brzezinski* inevitable discovery analysis:

- 1) whether the legal means are truly independent;
- 2) whether both the use of the legal means and the discovery by that means are truly inevitable; and
- 3) whether the application of the inevitable discovery exception either provides an incentive for police misconduct or significantly weakens constitutional protection

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## Inevitable Discovery – Key Questions

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- Would the evidence have been discovered inevitably by independent lawful means?
- Would application of the exception provide an incentive for police misconduct or significantly weaken constitutional protections?
  - Did police have probable cause to secure a warrant but fail to do so?

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## Inevitable Discovery – Would the evidence have been discovered inevitably by independent lawful means?

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Inevitable discovery exception applied because an unlawfully searched vehicle inevitably would have been subjected to an inventory search.

*United States v Kimes*, 246 F3d 800 (CA 6, 2001).

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**Inevitable Discovery – Would the evidence have been discovered inevitably by independent lawful means?**

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Inevitable discovery exception applied because a systematic search involving 200 volunteers was *already underway* searching for the victim's body in the area at the time the defendant directed the police to the location of the body during an interrogation conducted in violation of the defendant's right to counsel.

*Nix*, 467 US 431 (1984).

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**Inevitable Discovery – Would application of the exception incentivize police misconduct?**

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Applying the inevitable discovery exception to include evidence discovered after a traffic stop had been unlawfully prolonged would incentivize unlawfully prolonged traffic stops for the purpose of ferreting out unrelated crime.

*People v. Kocevar*, unpublished per curiam opinion of the Court of Appeals, issued March 16, 2017 (Docket No. 329150).

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**Inevitable Discovery – Would application of the exception incentivize police misconduct?**

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The inevitable discovery exception cannot be used to circumvent the warrant requirement. The exception does not apply when the only argument for its application is that the police *could have* secured a warrant (but did not).

*People v Hyde*, 285 Mich App 428 (2009); *United States v Quinney*, 583 F3d 891 (CA 6, 2009).

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**Inevitable Discovery – Would application of the exception incentivize police misconduct?**

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See also *People v Mahdi*, 317 Mich App 446 (2016).

- Applying the exception under these circumstances would incentivize police misconduct and significantly weaken Fourth Amendment protections because it would permit seizure whenever there is probable cause.

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## Exception: Independent Source

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The independent source exception applied to the unlawful search of the defendant's gas station by Treasury agents. A witness from the civil audit section of the Treasury Department testified that he had assigned a civil audit to the defendant's business based on information received during the audit of a gasoline distributor and that he was unaware of the unlawful search at the time he assigned the audit.

*People v Harajli*, 148 Mich App 189 (1986).

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## Exception: Attenuation

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**“Under the attenuation exception to the exclusionary rule, exclusion is improper when the connection between the [official] illegality and the discovery of the challenged evidence has become so attenuated as to dissipate the taint.”**

*People v Frazier*, 478 Mich 231 (2007).

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## Exception: Attenuation

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The attenuation doctrine evaluates the causal link between the government's unlawful conduct and the discovery of evidence.

*Utah v Strieff*, 136 S Ct 2056 (2016).

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## Exception: Attenuation

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Whether the attenuation exception applies is guided by consideration of three factors:

- **(1) temporal proximity,**
- **(2) intervening circumstances, and**
- **(3) the purpose and flagrancy of the official misconduct.**

*Utah v Strieff*, 136 S Ct 2056 (2016).

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***Attenuation: Discovery of the evidence closely followed unlawful police conduct?***

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The *two-month lapse of time* between the defendant's unlawful seizure and his voluntary, Mirandized confession greatly favored application of the attenuation exception to the confession.

*United States v Gross*, 662 F3d 393 (CA 6, 2011).

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***Attenuation: Discovery of the evidence closely followed unlawful police conduct?***

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Alleged consent to a second search did not remove the "taint" of the illegal first search of the defendant's vehicle. The second search *almost immediately followed* the illegal first search, and the defendant had vehemently objected to the first search.

*United States v Haynes*, 301 F3d 669 (CA 6, 2002).

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### **Attenuation: *Intervening circumstance?***

Discovery of an arrest warrant after an unlawful stop but *before the evidence was discovered* was an intervening factor sufficient to dissipate the taint of the unlawful police conduct.

*People v Reese*, 281 Mich App 290 (2008).

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### **Attenuation: *Intervening circumstance?***

The discovery of an arrest warrant *after the defendant was searched* and the evidence was seized was not an intervening circumstance for purposes of the attenuation exception.

*People v Maggit*, 319 Mich App 675 (2017).

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### ***Attenuation: Intervening circumstance?***

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Warrant discovered before evidence obtained:

- Attenuation favored

Warrant discovered after evidence obtained:

- Attenuation disfavored

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### ***Attenuation: Police misconduct flagrant?***

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The flagrancy factor favors exclusion only when the police misconduct is most in need of deterrence.

*Utah v Strieff*, 136 S Ct 2056 (2016).

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## ***Attenuation: Police misconduct flagrant?***

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No evidence of police misconduct when officers wrongfully arrested the defendant for trespassing (and later discovered cocaine in his vehicle).

- Officers made it clear to the defendant that he was free to leave and asked him to leave twice before they arrested him for trespassing.

*People v Reese*, 281 Mich App 290 (2008).

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## ***Attenuation: Police misconduct flagrant?***

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*Officers exploited* their initial misconduct when they conducted an investigatory stop of defendant's vehicle without reasonable suspicion.

The attenuation exception did not apply to the discovery of contraband that was the direct result of active, not passive, police exploitation of the initial stop.

*People v LoCicero*, 453 Mich 496 (1996).

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## **Attenuation: *Systemic police misconduct?***

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Evidence of systemic or recurrent police misconduct favors exclusion of the evidence.

- Officer's reliance on no-trespassing letter to detain defendant was not reasonable, and police department's routine practice of relying on such letters suggested systemic or recurrent police misconduct.

*People v Maggit*, 319 Mich App 675 (2017).

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## **Exception: Good Faith**

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The good faith exception to the exclusionary rule provides that evidence that was obtained in violation of the Fourth Amendment may nonetheless be introduced if the evidence is **“obtained in the reasonable, good-faith belief that the search or seizure was in accord with the Fourth Amendment.”**

*United States v Leon*, 468 US 897 (1984).

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## Exception: Good Faith

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Three contexts:

- ❑ Invalid search warrant
- ❑ Reliance on precedent
- ❑ Warrantless searches

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## Good Faith – Reliance on Warrant

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The good faith exception generally, but not exclusively, applies to invalid search warrants.

- ❑ The inquiry is “whether a reasonably well-trained officer would have known that the search was illegal despite the magistrate’s” authorization. If not, the exception applies.

*United States v Moorehead*, 912 F3d 963 (CA 6, 2019).

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## **Good Faith – Reliance on Warrant**

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Affidavit was not so lacking in indicia of probable cause that belief in its existence was unreasonable.

The warrant was deficient, but the good faith exception applied.

*United States v Ardd*, 911 F3d 348 (CA 6, 2018).

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## **Good Faith – Reliance on Warrant**

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Officers' reliance on warrant was objectively reasonable, even though the warrant **did not include the signing magistrate's name or bar number, a court seal, the confidential informant's "code number," or any dates of alleged transactions between the defendant and the informant.**

*People v Roston*, unpublished per curiam opinion of the Court of Appeals, issued December 13, 2016 (Docket No. 328726).

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## Good Faith – Reliance on Warrant

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Warrant for blood draw

**Basis: Suspect was involved in an accident and had been driving erratically**

**Reasoning: There are many reasons to drive erratically and to get in an accident**

*People v Debruyne*, unpublished per curiam opinion of the Court of Appeals, issued July 11, 2019 (Docket No. 346534).

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## Good Faith – Reliance on Warrant

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Reliance on a warrant was also unreasonable where there was **no fresh information** supporting the warrant.

*People v Brown*, unpublished per curiam opinion of the Court of Appeals, issued November 12, 2019 (Docket No. 344991).

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## Good Faith – Reliance on Warrant

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- Was the warrant invalid due to a jurisdictional defect?
- Was the warrant invalid due to an oversight or unrelated negligence?

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## Good Faith – Reliance on Precedent

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Officer reasonably relied on then-existing precedent to search vehicle incident to arrest.

- The court reasoned that application of the exclusionary rule in these circumstances would not deter police misconduct.

*People v Short*, 289 Mich App 538 (2010).

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## **Good Faith – Warrantless Search**

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*People v Hill*, 299 Mich App 402 (2013) (officers entered defendant's home with good faith to check on the welfare of a citizen – admissible even if community caretaker exception to the warrant requirement was not satisfied).

*People v Lemons*, 299 Mich App 541 (2013) (similar under emergency aid exception).

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## ***The EXCLUSIONARY RULE***

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