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## 06-15-1983 Memorandum to the Conference

William H. Rehnquist

*US Supreme Court Justice*

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 15, 1983

MEMORANDUM TO THE CONFERENCE

Case held for No. 81-430 - Illinois v. Gates

No. 82-963 - Massachusetts v. Sheppard

The question presented in the petition is whether the Fourth Amendment requires suppression of evidence reasonably seized in good faith reliance on a search warrant, later found defective owing to a technical judicial error.

After the beaten, burned body of a young woman was found in a vacant lot on a Saturday morning, Boston police obtained information linking respondent with the crime, and interviewed him. On Sunday, police obtained further information suggesting respondent committed the murder, and decided to obtain a warrant to arrest respondent and to search his dwelling. They composed an affidavit setting out what the lower courts found to be probable cause to search respondent's apartment, and in addition, listed in detail property they intended to seize. Because it was Sunday afternoon, the police were unable to find a clerk of court, or a suitable search warrant form. One of the officers found a warrant form used in a neighboring district, once used for searches for controlled substances, and marked it up for his purposes. He did not, however, change the references to "controlled substances" in the portion of the form that provided authority to search.

The officers took the application and affidavit to the home of a local judge, who also could not find an appropriate search warrant form. He made further changes in the "controlled substances" form before signing it, but did not alter the portion of the warrant granting authority to search for any controlled substance. The warrant made no

reference to the officers' affidavit which listed the items that the police intended to seize.

The officers then arrested respondent and searched his apartment. They seized a blood-stained pair of boots, scrapings of blood stains from the floor, other blood-stained clothing (both men and women's), and wire, as well as a blood-stained earring hidden under the flooring of the basement. The trial judge denied respondent's motion to suppress this evidence. He held that there was probable cause to issue a search warrant, and that, while the warrant was defective because it failed to list the items to be seized, the exclusionary rule did not require suppression of the evidence. He found that the police were faced with circumstances of some exigency and that the officers confined their search "within the limits of the authority the police thought reasonably had been granted." Given this, the Fourth Amendment did not require exclusion.

The Massachusetts Supreme Court reversed. It agreed with the trial judge that the warrant was defective because it failed to particularly describe the things to be seized. The court refused to look to the affidavit accompanying the warrant for such specification, on the grounds that the warrant contained no reference to that document. The Massachusetts Supreme Court also agreed with the trial judge that the items listed in the affidavit could have been seized pursuant to a proper warrant and that the police officer's search did not go beyond what a proper warrant would authorize: "the search was conducted in the same way and with the same results as it would have been conducted if the warrant had not been defective." The court nonetheless concluded on the basis of existing Supreme Court precedent that the exclusionary rule required suppression of the evidence. The Court explicitly declined to ground suppression on state law. In its petition, the State argues only that the judicially created exclusionary rule should be modified.

The result below may well be inconsistent with this Court's statements that warrants are not to be interpreted "hypertechnically," United States v. Ventresca, 380 U.S. 102 (1965), but the State has not challenged the lower courts' holding that the Fourth Amendment was violated. The reasonable good faith exception issue may present difficulties similar to those encountered in Gates, because the conduct at issue is that of the issuing magistrate. I

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would hold this case for Colorado v. Quintero, No. 82-1171,  
or Michigan v. Clifford, 82-357.

Sincerely,

*WJM*