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Excluding the Exclusionary Rule in Driver's License Suspension and Revocation Hearings

Riche v. Director of Revenue[1]

I. INTRODUCTION

The exclusionary rule is a "judicially created remedy designed to safeguard Fourth Amendment rights,"[2] which provides for the suppression of primary and derivative evidence obtained from an illegal search. While often applied in criminal cases, in *United States v. Calandra*,[3] the United States Supreme Court utilized a balancing test to determine whether to apply the rule in non-criminal contexts.[4] Suppression of evidence in accordance with the exclusionary rule in both criminal and non-criminal cases has been criticized in many circles,[5] with the debate recently resurfacing after the Supreme Court declined to apply the rule in administrative parole revocation proceedings.[6] That holding and others like it have been criticized on the grounds that administrative hearings are "quasi-criminal," or punitive in nature, and therefore involve penalties similar enough to criminal punishments to require suppression of illegally obtained evidence.

Because driver's license revocation and suspension hearings are administrative in nature, courts must use the *Calandra* balancing test to determine whether to apply the exclusionary rule. States take different stands on the issue of whether to apply the rule in such proceedings, with states such as Oregon, Ohio, and Illinois applying the rule,[7] while others, such as Maine,

1. 987 S.W.2d 331 (Mo. 1999).
2. United States v. Calandra, 414 U.S. 338, 347 (1974).
3. 414 U.S. 338 (1974).
4. *Id.* at 347.
5. For example, in *Bivens v. Six Unknown Federal Narcotics Agents*, Justice Warren Burger stated:

> [T]he history of the suppression doctrine demonstrates that it is both conceptually sterile and practically ineffective in accomplishing its stated objective. . . . Some clear demonstration of the benefits and effectiveness of the exclusionary rule is required to justify it in view of the high price it extracts from society—the release of countless guilty criminals.

403 U.S. 388, 415-16 (1971) (Burger, J., dissenting).

6. Pennsylvania Bd. of Probation & Parole v. Scott, 524 U.S. 357 (1998).
7. Pooler v. Motor Vehicle Div., 755 P.2d 701 (Or. 1988); Williams v. Ohio Bureau of Motor Vehicles, 610 N.E.2d 1229 (Ohio Mun. Ct. 1992); People v. Kruger, 567 N.E.2d 717 (Ill. App. Ct. 1991).

Maryland, and Connecticut refuse to do so.[8] In *Riche v. Director of Revenue*,[9] the Missouri Supreme Court aligned itself with the majority and, finding that the costs of applying the rule outweigh its benefits, refused to apply the exclusionary rule in a driver's license suspension hearing.[10] In so doing, the court also resolved a dispute among Missouri courts regarding whether reasonable suspicion or probable cause standards apply to the initial stop of a motorist in administrative license revocation and suspension hearings.

II. FACTS AND HOLDING

A Missouri Highway Patrol trooper stopped George Riche on Highway 161 after watching Riche drive his car over the line separating the shoulder from the road two times.[11] After the initial stop, the trooper required Riche to complete various sobriety tests.[12] On the basis of his performance, the trooper determined that Riche was intoxicated.[13] The trooper then arrested Riche and took him into custody.[14] At the police station, a Breathalyzer test established that Riche had a blood alcohol concentration of .10%.[15]

In accordance with the Missouri Revised Statutes Section 302.505.1, the Director of Revenue suspended Riche's driver's license.[16] At a trial de novo before the circuit court, Riche argued that Section 302.505.1 was

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8. Powell v. Secretary of State, 614 A.2d 1303 (Me. 1992); Motor Vehicle Admin. v. Richards, 1999 WL 817475 (Md. Ct. App. Oct. 14, 1999); Dolan v. Salinas, No. CV 9904942025, 1999 WL 566943 (Conn. Super. Ct. July 22, 1999).

9. 987 S.W.2d 331 (Mo. 1999).

10. *Riche*, 987 S.W.2d at 334.

11. *Id.* at 333. The trooper noted that Riche smelled of alcohol, his eyes were bloodshot, and he moved slowly and deliberately. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.* Section 302.505.1 (1998) provides:

> The department shall suspend or revoke the license of any person upon its determination that the person was arrested upon probable cause to believe such person was driving a motor vehicle while the alcohol concentration in the person's blood . . . was ten-hundredths of one percent or more by weight . . . or where such person was less than twenty-one years of age when stopped and was stopped upon probable cause to believe such person was "driving while intoxicated" in violation of section 577.010, or "driving with excessive blood alcohol content" in violation of section 577.012, or upon probable cause to believe such person violated a state, county or municipal traffic offense and such person was driving with a blood alcohol content of two-hundredths of one percent or more by weight.

MO. REV. STAT. § 302.505.1 (1998).

unconstitutional.[17] While the court found that the arresting trooper did not have probable cause to stop Riche, it determined that the evidence obtained after the stop was sufficient to provide probable cause for his arrest.[18] Therefore, Riche's constitutional challenges were rejected, and his driving suspension upheld.[19]

On appeal to the Missouri Supreme Court, Riche argued that Section 302.505.1 violated the Fourth Amendment of the United States Constitution,[20] and Article I, Section 15 of the Missouri Constitution.[21] Riche asserted that probable cause or reasonable suspicion to stop a vehicle is implicitly required by both constitutions, and any evidence obtained after a law enforcement officer stops a motorist absent probable cause that she is intoxicated should be barred by the exclusionary rule.[22]

The Missouri Supreme Court granted certiorari to determine whether the exclusionary rule should apply in administrative driver's license revocation and suspension hearings "to exclude evidence of intoxication gathered after the initial stop."[23] The court held that the exclusionary rule does not apply in

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17. The basis and substance of the constitutional arguments Riche raised at the circuit court are not included in the opinion. It may be surmised, however, that he asserted the same arguments that appear in the present case.

18. Riche v. Director of Revenue, 987 S.W.2d 331, 333 (Mo. 1999).

19. *Id.*

20. The Fourth Amendment of the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend IV.

21. Article I, Section 15, of the Missouri Constitution is the equivalent of the Fourth Amendment. It provides:

> That the people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures; and no warrant to search any place, or seize any person or thing, shall issue without describing the place to be searched, or the person or thing to be seized, as nearly as may be; nor without probable cause, supported by written oath or affirmation.

MO. CONST. art. I, § 15.

Riche also argued that Section 302.505.1 "violat[ed] his right to equal protection under the law" by "granting or withholding fourth amendment protections based upon age." *Riche*, 987 S.W.2d at 336. The court held that because there is no right to a driver's license, and because Riche was not part of a suspect class, and because the section does have a legitimate state interest, Riche's equal protection claim was without merit. *Id.* at 336-37.

22. *Id.* at 333-34. The exclusionary rule "requires that evidence obtained in violation of the fourth amendment cannot be used in a criminal proceeding against the victim of an illegal search and seizure." *Id.* at 333; *see also* United States v. Calandra, 414 U.S. 338, 347 (1974).

23. *Id.*

administrative proceedings where a motorist has been stopped by a law enforcement officer for driving while intoxicated, and that initial stop is made absent probable cause or reasonable suspicion to believe that she is intoxicated.

III. LEGAL BACKGROUND

The Supreme Court adopted the exclusionary rule in *Weeks v. United States*[24] and applied it to the states in *Mapp v. Ohio*.[25] Essentially, "[t]he exclusionary rule is a judicially created remedy designed to safeguard Fourth Amendment rights"[26] and requires that "evidence obtained in violation of the Fourth Amendment cannot be used in a criminal proceeding against the victim of an illegal search and seizure."[27] Courts have justified the rule on two grounds: judicial integrity and deterrence of police misconduct.

Judicial integrity was of primary importance for the *Weeks* and *Mapp* Courts in their application of the exclusionary rule.[28] Many early cases cited the integrity of the court as the primary motivation for the rule, with some courts evidencing a belief that "knowledge gained by the Government's own wrong cannot be used by it."[29] In *Elkins v. United States*,[30] the Supreme Court offered its explanation of the judicial integrity motivation by stating that "[i]n a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. . . . If the government becomes a lawbreaker, it breeds contempt for law."[31]

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24. 232 U.S. 383 (1914).

25. 367 U.S. 643, 648, 659 (1961) (finding that the exclusionary rule is an "imperative of judicial integrity" as well as a "deterrent safeguard without insistence upon which the Fourth Amendment would have been reduced to 'a form of words'").

26. Dolan v. Salinas, No. CV 990494202S, 1999 WL 566943, at *3 (Conn. Super. Ct. July 22, 1999); *see* also United States v. Calandra, 414 U.S. 338, 348 (1974).

27. *Calandra*, 414 U.S. at 347.

28. The *Weeks* Court found that if the evidence was not excluded, the Fourth Amendment protections would be of "no value." *Weeks*, 232 U.S. at 393; *see also* Duncan N. Stevens, *Off the* Mapp: *Parole Revocation Hearings and the Fourth Amendment*, 89 J. CRIM. L. & CRIMINOLOGY 1047, 1052 (1999) ("The Court in *Mapp* also recognized the deterrent aspect of the exclusionary rule, and argued that allowing states to ignore the rule 'encourage[d] disobedience to the Federal Constitution.'").

29. Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392 (1920).

30. 364 U.S. 206 (1960).

31. *Id.* at 364 U.S. 206, 223 (1960). In *Olmstead v. United States*, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting), Justice Brandeis articulated the need to ensure that the Government did not utilize evidence unlawfully obtained. He stated:

> Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government become a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that

In recent years, however, deterrence of police misconduct has emerged as the primary justification for the rule.[32] In *United States v. Calandra*,[33] the Supreme Court stated that the purpose of applying the exclusionary rule "is not to redress the injury to the privacy of the search victim . . . [but] to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures."[34] The Court then adopted "a balancing test weighing the likely social benefits of excluding evidence flowing from an unlawful seizure against the likely costs and benefits of using such evidence in a civil proceeding"[35] to determine whether the exclusionary rule should be applied. Therefore, the rule is not a remedy per se and does not "proscribe the introduction of illegally seized evidence in all proceedings or against all persons."[36] Instead, its use "has been restricted to those areas where its remedial objectives are thought most efficaciously served."[37]

Both the balancing test and the deterrence rationale were articulated in *Pennsylvania Board of Probation & Parole v. Scott*,[38] in which the Supreme

> the Government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution.

Id.

32. United States v. Calandra, 414 U.S. 338, 348 (1974) (stating that the exclusionary rule is a "judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved").

33. 414 U.S. 338 (1974).

34. *Id.* at 347; *see also* United States v. Janis, 428 U.S. 433, 446 (1976) ("[T]he prime purpose of the rule, if not the sole one, is to deter future unlawful police conduct.").

35. Dolan v. Salinas, No. CV 990494202S, 1999 WL 566943, at *3 (Conn. Super. Ct. July 22, 1999).

36. Stone v. Powell, 428 U.S. 465, 486 (1976). Often, cases that are considered civil in nature are not afforded the protection of the exclusionary rule. *See, e.g., In re* Littleton, 719 S.W.2d 772, 775 n.2 (Mo. 1986) (recognizing that exclusionary rule does not apply in civil attorney discipline proceeding because such proceeding is not "criminal" in nature); Lee v. Lee, 967 S.W.2d 82, 85 (Mo. Ct. App. 1998) (noting that "in civil cases, the manner in which evidence is obtained is irrelevant to the issue of admissibility"); Green v. Director of Revenue, 745 S.W.2d 818, 820 (Mo. Ct. App. 1988) (holding that an "administrative proceeding for revocation of a driver's license is not subject to the rules of evidence in criminal cases"); Herndon v. Albert, 713 S.W.2d 46, 47 (Mo. Ct. App. 1986) (noting that in civil action, "absent 'constitutional or statutory restrictions, evidence which is otherwise admissible will not be excluded because it has been obtained fraudulently, wrongfully, or illegally'"); Elliott v. Mid-Century Ins. Co., 701 S.W.2d 462 (Mo. Ct. App. 1985) (admitting illegally obtained evidence in civil action brought by homeowners against insurer).

37. *Calandra*, 414 U.S. at 348.

38. 524 U.S. 357 (1998).

Court declined to apply the exclusionary rule in an administrative parole revocation hearing.[39] The Court stated:

> [T]he State's use of evidence obtained in violation of the Fourth Amendment does not itself violate the Constitution. Rather, a Fourth Amendment violation is "fully accomplished" by the illegal search or seizure, and no exclusion of evidence from a judicial or administrative proceeding can "cure the invasion of the defendant's rights which he has already suffered." The exclusionary rule is instead a judicially created means of deterring illegal searches and seizures. As such, the rule does not proscribe the introduction of illegally seized evidence in all proceedings or against all persons, but applies only in contexts "where its remedial objectives are thought most efficaciously served." . . . Recognizing these costs, we have repeatedly declined to extend the exclusionary rule to proceedings other than criminal trials.[40]

The use of the *Calandra* balancing test has all but invalidated the exclusionary rule in non-criminal cases. Often courts cite the costs imposed on society by the rule's application. For example, the Virginia Supreme Court found that because it "makes reliable and probative evidence unavailable; . . . deflects the truthfinding process; . . . [and] risks engendering disrespect for law by promoting procedure above the fundamental search for truth and justice,"[41] the benefits of not applying the rule outweighed any costs.

Although deterrence is currently the primary rationale for applying the exclusionary rule, some courts have questioned how much deterrent effect the rule has in administrative cases. Some courts have held that where an officer has already violated a person's Fourth Amendment rights, any pre-violation deterrent value of the exclusionary rule is gone.[42] Furthermore, the deterrent

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39. *Id.*

40. *Id.* at 362-63 (citations omitted).

41. County of Henrico v. Ehlers, 379 S.E.2d 457, 462 (Va. 1989) (citing *Stone*, 428 U.S. at 490-91).

42. *Scott*, 524 U.S. at 362 ("[A] Fourth Amendment violation is 'fully accomplished' by the illegal search or seizure, and no exclusion of evidence from a judicial or administrative proceeding can 'cure the invasion of the defendant's rights which he has already suffered.'") (quoting United States v. Leon, 468 U.S. 897, 906 (1984)) The actual deterrent effect of the rule has been contested since its inception. *See, e.g.*, Dallin H. Oaks, *Studying the Exclusionary Rule in Search and Seizure*, 37 U. CHI. L. REV. 665, 708 (1970) (noting generally that the rule does not act as a deterrent, but that it may increase police training and general adherence to legality); James E. Spiotto, *Search and Seizure: An Empirical Study of the Exclusionary Rule and Its Alternatives*, 2 J. LEGAL STUD. 243 (1973). Recently, conflicting studies have shown that the debate has not ended. *See* William C. Heffernan & Richard W. Lovely, *Evaluating the Fourth Amendment Exclusionary Rule: The Problem of Police Compliance with the Law*, 24 U. MICH. J.L. REFORM 311 (1991); Arval A. Morris, *The Exclusionary Rule, Deterrence and*

value may be absent when the exclusionary rule is applied in cases in which the state uses the same evidence to prosecute through both administrative and criminal channels because "local law enforcement official[s] [are] already 'punished' by the exclusion of the evidence in the state criminal trial."[43]

The Supreme Court has never applied the exclusionary rule in a purely civil matter.[44] However, the Court has applied the rule in one case that it deemed sufficiently "quasi-criminal" to allow the exclusion of evidence.[45] Quasi-criminal proceedings are "a class of offenses against the public 'which have not been declared crimes, but wrongful against the general or local public which it is proper should be repressed or punished by forfeitures and penalties.'"[46] In *One 1958 Plymouth Sedan v. Commonwealth of Pennsylvania*,[47] the Court determined that quasi-criminal proceedings require application of the exclusionary rule. In that case, two Pennsylvania Liquor Control Board officers followed a suspicious car into Philadelphia,[48] and, upon stopping the vehicle, "found 31 cases of liquor not bearing Pennsylvania tax seals."[49] The officers then seized the car and the liquor.[50] The Pennsylvania Supreme Court held that because the exclusionary rule "applies only to criminal prosecutions" it should not be applied in forfeiture proceedings, which are civil in nature.[51] The Supreme Court disagreed, finding that the exclusionary rule applies in forfeiture cases because of their quasi-criminal nature.[52] Importantly, *One 1958 Plymouth Sedan* was decided before the Supreme Court's articulation of the balancing test in *Calandra*. In *United States v. Janis*,[53] however, the Court stated that the

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Posner's Economic Analysis of Law, 57 WASH. L. REV. 647, 653 (1982) (stating that "no conclusively sound social science study of the exclusionary rule's deterrent effect will actually be produced"); Mryon W. Orfield, Jr., *The Exclusionary Rule and Deterrence: An Empirical Study of Chicago Narcotics Officers*, 54 U. CHI. L. REV. 1016 (1987) (finding that the exclusionary rule does have a deterrent effect).

43. United States v. Janis, 428 U.S. 433, 448-49 (1976).

44. INS v. Lopez-Mendoza, 468 U.S. 1032, 1042 (1984).

45. One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693, 700-02 (1965). This is not to say that the federal courts can never apply the exclusionary rule in administrative proceedings. In fact, the Ninth Circuit, in *Verdugo v. United States*, held that the exclusionary rule applied in a sentencing hearing to exclude 371 grams of drugs that were unlawfully seized from the defendant's home. Verdugo v. United States, 402 F.2d 599 (9th Cir. 1968). That case has probably been overruled by *Pennsylvania Board of Probation & Parole v. Scott*, 524 U.S. 357 (1998).

46. State v. Widmaier, 724 A.2d 241, 251 (N.J. 1999).

47. 380 U.S. 693 (1965).

48. *Id.* at 693.

49. *Id.*

50. *Id.*

51. *Id.* at 695.

52. *Id.* at 699.

53. 428 U.S. 433 (1976).

distinction between civil and criminal actions is irrelevant "where . . . the civil proceeding serves as an adjunct to the enforcement of the criminal law."[54]

State courts differ in their analysis of quasi-criminal proceedings.[55] For example, while California follows federal precedent in refusing to exclude evidence from parole revocation hearings,[56] and allowing exclusion for forfeiture proceedings,[57] it applies the exclusionary rule in civil proceedings to commit a drug addict.[58] Maryland follows the Supreme Court in applying the exclusionary rule in civil in rem forfeiture proceedings because of their "quasi-criminal" nature,[59] but refuses to apply it in employment discharge proceedings,[60] probation proceedings,[61] and civil proceedings for return of seized property.[62]

States also differ in their treatment of driver's license suspension and revocation hearings. Some courts consider such proceedings quasi-criminal, while others treat them as civil matters. For example, Utah acknowledged that a person has a right to a driver's license, but held that it did "not agree that revocation proceedings are therefore necessarily criminal or quasi-criminal in nature."[63] Conversely, in *Williams v. Ohio Bureau of Motor Vehicles*,[64] an Ohio municipal court, while noting that the need to keep intoxicated drivers off of the

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54. *Id.* at 463.

55. *See, e.g., In re* Lance W., 694 P.2d 744, 756-57 (Cal. 1985); Hughes v. Tupelo Oil Co., 510 So. 2d 502, 505 (Miss. 1987) (holding that "evidence seized by the State in violation of the state and federal constitutions is inadmissible in quasi-criminal proceedings").

56. *In re* Martinez, 463 P.2d 734, 740 (Cal. 1970) (refusing to apply the exclusionary rule to parole revocation hearings because "the incremental deterrent effect that will realistically be achieved by shielding the Adult Authority from illegally procured evidence is slight; the bungling police officer is not likely to be halted by the thought that his unlawful conduct will prevent the termination of parole"), *abrogation on other grounds recognized by* People v. Lewis, 88 Cal. Rptr. 2d (Ct. App. 1999).

57. People v. Reulman, 396 P.2d 706, 709 (Cal. 1964).

58. People v. Moore, 446 P.2d 800, 805 (Cal. 1968), *overruled on other grounds by* People v. Thomas, 566 P.2d 228, 234 n.8 (Cal. 1977).

59. One 1995 Corvette v. Mayor of Baltimore, 724 A.2d 680 (Md. 1999) (stating that in rem forfeiture proceedings are quasi-criminal in nature and require application of the exclusionary rule).

60. Sheetz v. Mayor of Baltimore, 553 A.2d 1281 (Md. 1989).

61. Chase v. State, 522 A.2d 1348 (Md. 1987).

62. Chu v. Anne Arundel County, 537 A.2d 250 (Md. 1988); *see also* Pullin v. Louisiana State Racing Comm'n, 484 So. 2d 105 (La. 1986) (admitting illegally obtained evidence in action before Louisiana State Racing Commission); Hughes v. Tupelo Oil Co., 510 So. 2d 502, 505 (Miss. 1987) (finding that blood alcohol tests illegally obtained were admissible in civil wrongful death action, but "evidence seized by the State in violation of the state and federal constitutions is inadmissible in quasi-criminal proceedings").

63. Ballard v. State Motor Vehicle Div., 595 P.2d 1302, 1304 (Utah 1979).

64. 610 N.E.2d 1229 (Ohio Mun. Ct. 1992).

roads is important,[65] determined that "an illegal stop prohibit[ed] suspension of a driver's license for failure to submit to chemical testing."[66] The court found that because of the similarities between licence suspensions and other criminal sanctions, the petitioner should be able to argue for the application of the exclusionary rule.[67] The court held that administrative driver's license suspensions involve quasi-criminal penalties and stated:

> Arguably, the exclusionary rule would apply for the policy reasons . . . adopted by this court. . . . The loss of an operator's license for a period of time for refusal is a penalty arising from the commission of a separate offense. While the proceeding is a civil one, the ultimate consequence is more akin to a criminal sanction than a civil sanction.[68]

Some states allow application of the exclusionary rule even if administrative license revocation hearings are not classified as "quasi-criminal" in nature. Oregon permits application of the exclusionary rule in administrative license suspensions, as demonstrated in *Pooler v. Motor Vehicles Division.*[69] In *Pooler*, a law enforcement officer stopped Pooler after he made a U-turn to avoid a sobriety checkpoint.[70] During the stop, the officer administered both field and chemical sobriety tests, which Pooler failed.[71] Pooler was arrested and his driver's license suspended.[72] No mention was made of the quasi-criminal nature of the punishment. Rather, the Oregon Supreme Court determined that if the stop was made absent reasonable suspicion, the evidence obtained from the stop should have been suppressed.[73] Because the state admitted that the stop was unlawful, the court concluded that the evidence was inadmissible.[74]

Illinois also applies the exclusionary rule in driver's license suspension hearings without specifying that they are quasi-criminal.[75] In *People v. Kruger*,[76]

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65. *Id.* at 1231.

66. *Id.* (stating that a "constitutional stop . . . must take place before a refusal to permit chemical testing triggers a license suspension").

67. *Id.*

68. *Id.*

69. *See* Pooler v. Motor Vehicles Div., 755 P.2d 701 (Or. 1988).

70. *Id.* at 701.

71. *Id.* at 701-02.

72. *Id.* at 702.

73. *Id.* at 703.

74. *Id.*

75. Minnesota has also found that the exclusionary rule applies in administrative license revocation hearings. In *Schwartz v. Commissioner of Public Safety*, 422 N.W.2d 761, 762 (Minn. Ct. App. 1988), the court found that information obtained by a confidential informant did not establish reasonable suspicion to stop a vehicle, therefore allowing for reinstatement of the driver's license.

76. 567 N.E.2d 717 (Ill. App. Ct. 1991), *cert. denied*, 503 U.S. 519 (1992).

the Illinois Court of Appeals found that "the assumption that the exclusionary rule is necessarily inapplicable to State-initiated civil proceedings is not only incorrect, but has been rejected by Illinois courts."[77] Both judicial integrity and the protection of the public from unlawful searches and seizures were of primary importance to the court because both aims "would be undercut if not frustrated by allowing the State to benefit from illegal or unauthorized arrests made by its agents."[78]

Some states interpret their statutes to require application of the exclusionary rule, resulting in a per se reversal of a driver's license suspension or revocation. In *Brownsberger v. Department of Transportation, Motor Vehicle Division*,[79] the Iowa Supreme Court found that "[t]he department must rescind any license revocation that flows from police action which is subsequently found by the court to be without reasonable grounds for belief that the OWI law has been violated."[80] Because the judge had excluded all evidence arising from an unconstitutional stop in a previous criminal action against Brownsberger, the court found that Iowa statutory law did not allow the Department of Transportation to use the same evidence. Furthermore, states that apply the exclusionary rule in civil cases often find that more than deterrence of poor police practices influences its use. For example, in Oregon, the restoration of defendants' rights has been offered as a justification for the exclusionary rule.[81]

While states such as Oregon and Illinois have adopted the exclusionary rule in civil cases, a majority of states do not apply the exclusionary rule in administrative license suspension hearings.[82] In *Powell v. Secretary of State*,[83] the Supreme Court of Maine declined to apply the exclusionary rule, explaining that "[b]ecause the evidence has already been excluded from the criminal proceeding, there is little additional deterrent effect on police conduct by preventing consideration of the evidence by the hearing examiner."[84] The court also determined that applying the rule would be costly and would endanger

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77. *Id.* at 723 (citations omitted).

78. *Id.* at 722.

79. 460 N.W.2d 449 (Iowa 1990).

80. *Id.* at 451 (citing IOWA CODE § 321J.13(4) (1989)); *see also* Armstrong v. Department of Justice, 800 P.2d 172 (Mont. 1990) (holding that a police officer must have reasonable suspicion to stop a vehicle before establishing probable cause for arrest); Texas Dep't of Pub. Safety v. McCulloch, No. 03-98-00480-CV, 1999 WL 603662 (Tex. Ct. App. Aug. 12, 1999).

81. *See* State v. Tanner, 745 P.2d 757, 758 (Or. 1987); State v. Davis, 666 P.2d 802, 809 (Or. 1983).

82. *See, e.g.*, County of Henrico v. Ehlers, 379 S.E.2d 457, 461-62 (Va. 1989) (holding that (1) the Supreme Court has never applied the exclusionary rule in civil cases, (2) it would not deter police misconduct, and (3) its deterrent value is questionable).

83. 614 A.2d 1303 (Me. 1992).

84. *Id.* at 1306-07.

society.[85] More often than not, courts find that because the defendant's constitutional rights have already been violated, excluding the evidence would serve no useful purpose.[86] The administration of the rule may also be problematic. Some courts have expressed "concern with the effect of applying the exclusionary rule in streamlined administrative proceedings."[87] Other states, however, have simply stated that questioning whether a traffic stop was justified is beyond the scope of an administrative license suspension hearing.[88] Some states base their refusal to apply the exclusionary rule on intrajurisdictional precedent and an interpretation of the state's applicable statute.[89]

In *Westendorf v. Iowa Department of Transportation*,[90] the Iowa Supreme Court applied the *Calandra* cost-benefit analysis and determined that "the imposition of an exclusionary sanction in this license revocation proceeding would have little force as a deterrent of unlawful police action because the department does not control the actions of local police officers."[91] Therefore, the costs of applying the rule, including the "loss of reliable and relevant proof that licensed operators have driven while intoxicated" as well as the lack of a deterrent effect, caused the court to find that the exclusionary rule should not be applied in those proceedings.[92] Maryland has also stressed the costs to society of applying the rule. In *Motor Vehicle Administration v. Richards*,[93] the Maryland Court of Appeals held that administrative license revocation

85. *Id.* at 1307.

86. In addressing the non-deterrent effect of the exclusionary rule in administrative or civil cases, it has been noted that "a detective who might be tempted to obtain evidence illegally for use in a criminal case may not even consider the effect of such illegality upon a proceeding to abate a public nuisance." Motor Vehicle Admin. v. Richards, 739 A.2d 58, 57 (Md. 1999) (quoting Whitaker v. Prince, 514 A.2d 4, 12 (Md. 1986)).

87. *Richards*, 739 A.2d at 67.

88. *See, e.g.*, Beavers v. State, 851 P.2d 432, 434 (Nev. 1993) (holding that "whether the initial traffic stop was lawful is irrelevant in a DMV license revocation proceeding" since it "is a civil proceeding, not a criminal prosecution" that does not intend "to impose additional punishment, but to protect the unsuspecting public").

89. *See* Dolan v. Salinas, No. CV 990494202S, 1999 WL 566943, at *3-4 (Conn. Super. Ct. July 22, 1999).

90. 400 N.W.2d 553 (Iowa 1987). *Westendorf* has, however, been superseded by IOWA CODE § 321J.13(4) (1989). *See supra* note 79-80 and accompanying text.

91. *Westendorf*, 400 N.W.2d at 557; *see also* Delguidice v. New Jersey Racing Comm'n, 494 A.2d 1007, 1011 (N.J. 1985); Deshields v. Chester Upland Sch. Dist., 505 A.2d 1080, 1083 (Pa. Commw. Ct. 1986).

92. *Id.* at 557. However, in *Brownsberger v. Department of Transportation*, 460 N.W.2d 449 (Iowa 1990), the Iowa Supreme Court noted that the holding in *Westendorf* had been superseded by IOWA CODE § 321J.13(4) (1989), which excludes evidence from an administrative driver's license revocation proceeding upon a prior ruling in a criminal case that the arresting officer did not have reasonable grounds to believe that the suspect was intoxicated. *Id.* at 451.

93. 739 A.2d 58 (Md. 1999).

proceedings are civil in nature and were "enacted for the protection of the public,"[94] therefore precluding the court from applying the exclusionary rule.

In Missouri, while the exclusionary rule "applies in criminal prosecutions for driving while intoxicated,"[95] administrative license suspension or revocation proceedings are civil in nature.[96] Missouri "recognize[s] the inapplicability of the fourth amendment's exclusionary rule to civil proceedings."[97] In fact, all three Missouri appellate courts have found that the exclusionary rule does not apply in driver's license suspension and revocation proceedings.[98] The Missouri Supreme Court did not address the issue, however, until *Riche v. Director of Revenue*.[99]

In general, Missouri courts have found that disciplinary actions are civil, not quasi-criminal, in nature. In *In re Littleton*,[100] the Missouri Supreme Court refused to apply the exclusionary rule in an attorney discipline proceeding, finding that "evidence obtained in an illegal or unethical manner is not subject to an exclusionary rule except in criminal cases."[101] In *State ex rel. Peach v.*

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94. *Id.* at 68 (quoting Motor Vehicle Admin. v. Shrader, 597 A.2d 939, 943 (Md. 1991)).

95. Riche v. Director of Revenue, 987 S.W.2d 331, 333 (Mo. 1999) (citing State v. Miller, 894 S.W.2d 649, 654 (Mo. 1995)).

96. *See, e.g.*, *In re* Littleton, 719 S.W.2d 772, 775 (Mo. 1986) (attorney discipline proceeding civil in nature); Green v. Director of Revenue, 745 S.W.2d 818, 820 (Mo. Ct. App. 1988) (holding that a review of decision regarding failure to take a breath test constitutes a civil action); Delaney v. Missouri Dep't of Revenue, 657 S.W.2d 354, 356 (Mo. Ct. App. 1983) ("Court review of a revocation for failure to take a chemical breath test is judicial review of an administrative decision, and is a civil proceeding.").

97. Kimber v. Director of Revenue, 817 S.W.2d 627, 631 (Mo. Ct. App. 1991); *see also In re Littleton*, 719 S.W.2d at 775 n.2 (noting that "evidence obtained in an illegal or unethical manner is not subject to an exclusionary rule except in criminal cases").

98. *See, e.g.*, Gordon v. Director of Revenue, 896 S.W.2d 737 (Mo. Ct. App. 1995); Sullins v. Director of Revenue, 893 S.W.2d 848 (Mo. Ct. App. 1995); Green v. Director of Revenue, 745 S.W.2d 818 (Mo. Ct. App. 1988).

99. The Missouri Supreme Court had also never addressed the quasi-criminality of driver's license suspension hearings. Indeed, the penalties involved in criminal and administrative DWI charges are similar in nature and effect. A criminal conviction for driving while intoxicated results in a class B misdemeanor and revocation of the convicted person's license. *See* MO. REV. STAT. § 577.505 (1998) (stating that after a successful prosecution for DWI, "[t]he court shall forward to the director of revenue the order of revocation of driving privileges and any licenses surrendered"). In contrast, a non-criminal conviction for driving while intoxicated results in a 30 day suspension if there are no prior convictions, or a one year suspension if during the previous five years the driver has been convicted of an alcohol-related driving offense. *See* MO. REV. STAT. § 302.525.2(1)-(2) (1998).

100. 719 S.W.2d 775 (Mo. 1986).

101. *In re* Littleton, 719 S.W.2d 775 n.2 (Mo. 1986); *see also* State *ex rel.* Peach v. Boykins, 779 S.W.2d 236, 237 (Mo. 1989). A law enforcement officer must have "reasonable suspicion that criminal activity is taking place" to justify stopping a vehicle

Boykins,[102] the Missouri Supreme Court also refused to apply the exclusionary rule in an ouster proceeding.[103]

Lower courts in Missouri have found that the exclusionary rule does not apply in driver's license suspension and revocation hearings. In *Gordon v. Director of Revenue*,[104] the Missouri Court of Appeals stated that "the exclusionary rule applies only to criminal proceedings and does not extend to exclude evidence in civil cases."[105] While the Missouri Supreme Court did not address the issue until *Riche v. Director of Revenue*,[106] other Missouri courts had also held the exclusionary rule inapplicable in administrative driver's license suspension and revocation hearings.[107]

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for an alcohol-related traffic violation. State v. Huckin, 847 S.W.2d 951, 954 (Mo. Ct. App. 1993); *see also* Terry v. Ohio, 392 U.S. 1 (1968); Schranz v. Director of Revenue, 703 S.W.2d 912, 913 (Mo. Ct. App. 1986). That requirement is satisfied if the officer observes "unusual operation" of a vehicle that is not a traffic violation. *Huckin*, 847 S.W.2d at 954 (quoting Wallace v. Director of Revenue, 754 S.W.2d 900, 902 (Mo. Ct. App. 1988)). For example, observing a car weaving within its own lane is sufficient to support reasonable suspicion. *Id.* at 955 (holding that a car's drifting from the center line toward the shoulder constituted erratic driving for which reasonable suspicion was proper).

Confusion was created, however, by the Missouri Supreme Court's decision in *Aron v. Director of Revenue*, 737 S.W.2d 718 (Mo. 1987), in which the court stated that "the specific probable cause to arrest for an alcohol-related traffic violation and in turn to support an administrative license suspension may be developed after a motorist is *otherwise properly stopped*." *Id.* at 719 (emphasis added). The words "properly stopped" have caused some Missouri courts to believe that "the requirement of probable cause extended to the initial stop of the driver." Riche v. Director of Revenue, 987 S.W.2d 331, 335 (Mo. 1999); *see also* Lasley v. Director of Revenue, 954 S.W.2d 327, 332 (Mo. 1997); Cook v. Director of Revenue, 890 S.W.2d 738, 739-40 (Mo. Ct. App. 1995); Wallace v. Director of Revenue, 786 S.W.2d 893 (Mo. Ct. App. 1990); Edwards v. Director of Revenue, 774 S.W.2d 842, 843 (Mo. Ct. App. 1989).

102. 779 S.W.2d 236 (Mo. 1989).

103. *Id.* at 237.

104. 896 S.W.2d 737 (Mo. Ct. App. 1995).

105. *Id.* at 740.

106. 987 S.W.2d 331 (Mo. 1999).

107. *See, e.g.*, Lunsford v. Director of Revenue, 969 S.W.2d 833, 834 (Mo. Ct. App. 1998) (stating that "evidence obtained in an illegal manner, e.g., as a result of an illegal traffic stop, would not be inadmissible in a civil proceedings such as an administrative license suspension"); Kimber v. Director of Revenue, 817 S.W.2d 627, 632 (Mo. Ct. App. 1991) (finding that an illegal arrest "does not impair the admissibility of evidence relating to the arrest or stemming from it in the civil proceeding to suspend Mr. Kimber's driver's license . . . because the exclusionary rule is inapplicable in civil proceedings"); Green v. Director of Revenue, 745 S.W.2d 818, 821 (Mo. Ct. App. 1988) (noting the "inapplicability of the exclusionary rule to . . . civil license revocation").

IV. INSTANT DECISION

In *Riche v. Director of Revenue*,[108] the Missouri Supreme Court addressed the confusion among the courts regarding the requisite cause for stopping a motorist, and the use of the exclusionary rule in administrative driver's license suspension hearings. The court held that probable cause was not needed to justify the initial stop of the motorist, and that the exclusionary rule did not apply.

First, the court recognized that the exclusionary rule "requires that evidence obtained in violation of the fourth amendment cannot be used in a criminal proceeding against the victim of an illegal search and seizure."[109] The purpose of the rule, according to the court, is "to deter unlawful police conduct."[110] Therefore, from the beginning of its opinion, the Missouri Supreme Court aligned itself with the majority of courts that believe the purpose of the exclusionary rule is to deter illegal searches and seizures, not to remedy Fourth Amendment violations.

Next, the court equated driver's license suspension hearings to two proceedings involving "similar issues" in which the exclusionary rule was held not to apply.[111] *In re Littleton* involved an attorney discipline proceeding, while *State ex rel. Peach v. Boykins* involved an ouster.[112] The exclusionary rule did not apply in either proceeding.[113] The Missouri Supreme Court then aligned itself with the three Missouri appellate courts that have refused to apply the exclusionary rule in administrative driver's license suspension and revocation hearings, and with other jurisdictions with similarly worded statutes which have held that such proceedings do not require application of the exclusionary rule.[114]

The court then recognized that the Supreme Court "has repeatedly held that the use of evidence obtained in violation of the fourth amendment does not violate the Constitution,"[115] and that the exclusionary rule was meant for deterrence of police misconduct.[116] Next, the court noted that the exclusionary rule applies "where its remedial objectives are thought most efficaciously served,"[117] not when "'substantial social costs' outweigh its deterrent benefits."[118] The court cited Supreme Court cases declining to apply the rule

108. 987 S.W.2d 331 (Mo. 1999).
109. *Id.* at 333 (citing United States v. Calandra, 414 U.S. 338, 347 (1974)).
110. *Id.* at 332.
111. *Id.* at 333.
112. *Id.* at 334.
113. *Id.*
114. *Id.*
115. *Id.* at 333 (citing Pennsylvania Bd. of Probation & Parole v. Scott, 524 U.S. 357 (1998)).
116. *Id.*
117. *Id.* (citing United States v. Calandra, 414 U.S. 348, 348 (1974)).
118. *Id.* (citing *Scott*, 524 U.S. at 357).

because the costs outweighed the benefits in "parole revocation hearings, . . . federal deportation cases, . . . and federal grand jury proceedings."[119]

Next, the court found that in applying "the cost benefit analysis in the context of section 302.505 proceedings, it becomes clear that applying the exclusionary rule would impose significant costs to society."[120] The court stated that applying the rule would "unnecessarily complicate and burden an administrative process designed to remove drunken drivers from Missouri's roads . . . as quickly as possible," and "would allow many drivers to remain on the road who would otherwise lose their licenses."[121]

The court then found that the benefits of applying the rule in driver's license suspension and revocation hearings do not outweigh the costs because the rule would have little effect on deterring illegal police action.[122] The court reached that conclusion because "the director of revenue has no control of the actions of local police."[123] Therefore, the court noted that "[m]inimal additional deterrence . . . is gained by applying the exclusionary rule in administrative proceedings."[124] Thus, the court found that "any incremental deterrent effect that might be achieved by extending the rule to [driver's license suspension and revocation hearings] is uncertain at best, . . . and is outweighed by the benefit of using" the evidence.[125]

The court then addressed Riche's argument that a driver's license suspension or revocation proceeding is quasi-criminal in nature.[126] The court recalled the Supreme Court's decision to apply the exclusionary rule in *One 1958 Plymouth Sedan v. Commonwealth of Pennsylvania*[127] and distinguished that proceeding from Riche's case, finding that "the purpose of the Pennsylvania forfeiture statue was to augment the criminal punishment of fines."[128] In contrast, "[t]he purpose of Missouri's suspension and revocation proceeding . . . is entirely distinct from criminal punishment of drunken drivers."[129] That purpose, according to the court, "is . . . to protect the public by quickly removing drunken drivers from Missouri's roads and highways."[130]

The court then addressed the confusion created by its decision in *Aron v. Director of Revenue.*[131] The confusion concerned the "use of the phrase

119. *Id.* at 334 (citations omitted).
120. *Id.*
121. *Id.*
122. *Id.* at 335.
123. *Id.* at 334.
124. *Id.* at 335 (citations omitted).
125. *Id.*
126. *Id.*
127. 380 U.S. 693 (1965).
128. Riche v. Director of Revenue, 987 S.W.2d 331, 335 (Mo. 1999).
129. *Id.*
130. *Id.*
131. 737 S.W.2d 718 (Mo. 1987).

'properly stopped' [which] implied that the requirement of probable cause extended to the initial stop of the driver."[132] The court noted that some lower courts had cited *Aron* to require "that a license revocation must be based on a lawful stop."[133] The court rejected the insinuation that the stop be based on probable cause, finding that "[t]o the extent that *Aron* and its progeny impose a probable cause requirement on the initial stop and apply the exclusionary rule in section 302.505 proceedings, they are overruled."[134]

Therefore, because administrative driver's license suspension and revocation hearings are not quasi-criminal in nature, and the deterrent value that the exclusionary rule affords is not available in such proceedings, and because public safety requires quick action to take drunk drivers off of the road, the exclusionary rule does not apply.

V. COMMENT

In *Riche v. Director of Revenue*,[135] the Missouri Supreme Court refused to allow "the criminal to go free because the constable has blundered."[136] In so doing, it afforded the public greater protection against drunk drivers but may have decreased the public's protection against unlawful searches and seizures. Importantly, the original twin aims of the exclusionary rule were to promote judicial integrity and deter unreasonable searches and seizures.[137] While judicial integrity has taken a back seat to the deterrence rationale, some courts have recognized the validity of judicial integrity in deciding to apply the exclusionary rule. Those courts have, like the originators of the exclusionary rule, refused to allow "the state to benefit from illegal or unauthorized arrests made by its agents."[138]

Thus, the exclusionary rule as originally adopted was not a remedy for the offender, but a sanction for the state. Indeed, the first courts to recognize the rule found that "to sanction illegal [police conduct] would be to affirm by judicial decision a manifest neglect if not an open defiance of the prohibitions of the Constitution."[139] That rationale should be resurrected as a consideration for courts faced with unreasonable searches and seizures, regardless of the forum.

132. *Riche*, 987 S.W.2d at 335 (citing Lasley v. Director of Revenue, 954 S.W.2d 327, 332 (Mo. 1997) (Limbaugh, J., concurring)).

133. *Id.* at 335.

134. *Id.* at 336.

135. *Id.* at 331.

136. People v. Defore, 150 N.E. 585, 587 (N.Y.), *cert. denied*, 270 U.S. 656 (1926).

137. *See* Mapp v. Ohio, 367 U.S. 643 (1961); Weeks v. United States, 232 U.S. 383 (1914).

138. People v. Kruger, 567 N.E.2d 717, 722 (Ill. App. Ct. 1991).

139. *Weeks*, 232 U.S. at 394.

Applying the exclusionary rule does exact great costs from society.[140] It allows a person who is by definition guilty to be absolved on a technicality. Truly, some scholars would abolish the rule entirely based upon what could be termed "reverse integrity," reasoning that the rule "undermines the reputation of and destroys the respect for the entire judicial system" because it allows the guilty to go free.[141]

However, the exclusionary rule is currently the sole means by which to deter or remedy a Fourth Amendment violation.[142] While scholars and critics have proposed a myriad of alternatives to the rule, the exclusionary rule currently operates as the sole method by which the state may make a statement regarding the efficacy of police action.[143] While often drastic and costly, utilization of the exclusionary rule to suppress illegally obtained evidence shows both the police and the prosecutors who train them that they behaved illegally, and that on principle alone the courts cannot allow such conduct to occur. In this manner, the judicial integrity and deterrence rationales intersect.[144]

The Missouri Supreme Court correctly noted that the exclusionary rule probably does not provide much deterrence when applied in administrative cases. In fact, no conclusive evidence has shown that the rule ever serves as an effective deterrent, even in criminal cases.[145] However, studies have shown that

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140. *See* Rakas v. Illinois, 439 U.S. 128, 137 (1978) (stating that "[e]ach time the exclusionary rule is applied it exacts a substantial social cost for the vindication of Fourth Amendment rights"). Those costs include releasing criminals into society based upon lack of evidence for conviction, losing credibility with the public for releasing offenders on a technicality, and endangering the public. Not only may public safety be affected, but also the public pocketbook. Economists like Judge Richard Posner find that the rule is inefficient and should be abrogated. Richard F. Duzbin, *Abrogating the Exclusionary Rule Outside of the Criminal Trial Context?* Pennsylvania Board of Probation & Parole v. Scott: *One Step Closer to a Per Se Rule in Fourth Amendment Jurisprudence*, 33 U. RICH. L. REV. 631, 645 (1999).

141. Malcolm Wilkey, *The Exclusionary Rule: Why Suppress Valid Evidence?*, 62 JUDICATURE 214, 223 (1978).

142. Christopher Slobogin, *Why Liberals Should Chuck the Exclusionary Rule*, 99 U. ILL. L. REV. 363, 367 n.3 (1999).

143. *Id.* (citing various remedies proposed by judges and scholars, including use of a quasi-judicial tribunal, contempt citations, damages regimes allowing suit against officers, internal policy procedures, administrative damages, the initiation of a civil rights office that investigates police violations of the constitution, and a mini-trial procedure that would penalize officers or allow for civil remedies).

144. Indeed, in *Mapp v. Ohio*, the Supreme Court noted not only that judicial integrity supported excluding the evidence, but that the deterrence of police conduct in violating Fourth Amendment rights was of import, since "allowing states to ignore the rule 'encouraged disobedience to the federal constitution.'" Duncan N. Stevens, *Off the* Mapp: *Parole Revocation Hearings and the Fourth Amendment*, 89 J. CRIM. L. & CRIMINOLOGY, 1047, 1052 (1999).

145. *See, e.g.*, Oaks, *supra* note 42, at 708 (noting generally that the rule does not act as a deterrent, but increases police training and general adherence to legality); Spiotto,

Missouri Law Review, Vol. 65, Iss. 2 [2000], Art. 6

because of the use of the exclusionary rule, prosecutors train the police officers in their jurisdiction; those training efforts alone have a great deal of deterrent effect on police misconduct.[146] Furthermore, many officers find the exclusionary rule beneficial in their day to day law enforcement activities.[147] With better information and knowledge of the rules of law regarding their conduct, police officers' use of illegal procedures decreases.[148] Therefore, because the exclusionary rule's primary benefits of officers' increased training and in-court appearances are currently felt by the law enforcement community in a system that does not apply the rule in administrative proceedings, it is likely that applying the exclusionary rule in administrative proceedings would offer no additional deterrence. The *Calandra* balancing test would therefore seem to mandate exclusion of the exclusionary rule in administrative proceedings.

However, while no additional deterrent effect may be added by applying the rule, the lack of consistency in application between administrative and criminal proceedings may decrease the protection already afforded the public against unlawful searches and seizures. *Riche* states, in essence, that the exclusionary rule does not apply in administrative driver's license suspension and revocation proceedings, and that the reasonable suspicion needed to justify a stop may be obtained after the stop has occurred.[149] Therefore, if an officer makes a stop on

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supra note 42, at 243. Recently, conflicting studies have shown that the debate has not ended. *See* Heffernan & Lovely, *supra* note 42, at 311; Morris, *supra* note 42, at 651 (stating that "no conclusively sound social science study of the exclusionary rule's deterrent effect will actually be produced."); Orfield, Jr., *supra* note 42, at 1016 (finding that the exclusionary rule does have a deterrent effect).

146. *See* Heffernan & Lovely, *supra* note 42, at 336 (noting that "[w]ith extensive training . . . officers acquire a degree of knowledge that approaches that of lawyers . . . . In this respect, at least, the trend that began with *Mapp* has been a beneficial one; in service training in criminal procedure has been critical in enhancing police knowledge of the rules of search and seizure"). Heffernan and Lovely's research shows, however, "that more than 30 years after *Mapp* applied the exclusionary rule to the states, officers are frequently uncertain of what they may and may not do when specific rules of search and seizure govern their conduct." Heffernan & Lovely, *supra* note 42, at 355.

147. As one officer noted,

> I believe in the principle of the exclusionary rule. Sometimes I don't like how judges interpret it. Without the exclusionary rule, police investigating a murder or something would be like a criminal released into the midst of society. They would abuse it. I don't want the rule eliminated, I just want the right to do my job and to prove my cases without being sued. I agree with the rule. It shouldn't be abolished. Society shouldn't be left without the rule.

Orfield, Jr., *supra* note 42, at 1051. Time in court has been noted by one study as a valuable experience for officers. Orfield, Jr., *supra* note 42, at 1038. As one officer stated: "Going to court is more concrete than training." Orfield, Jr., *supra* note 42, at 1038. Another noted: "When you are in court, you find out what gets past the judge and what doesn't." Orfield, Jr., *supra* note 42, at 1038.

148. Orfield, Jr., *supra* note 42, at 1038.

149. Riche v. Director of Revenue, 987 S.W.2d 331, 355 (Mo. 1999). Missouri

an illegal "hunch" absent reasonable suspicion, the exclusionary rule will not be applied to invalidate an administrative suspension or revocation of that person's license. Thus, while reasonable suspicion for the stop must be present before the intoxicated driver may be prosecuted criminally, no reasonable suspicion need exist before the intoxicated driver may be prosecuted in an administrative proceeding. While the forums are different, the penalties are similar.

Therefore, based upon the deterrence rationale bolstered by the need to maintain judicial integrity, the exclusionary rule should also apply in administrative proceedings. While extension of the rule's application may not further deter police misconduct, it will augment the existing rule and decline to provide a loophole by which careless police practices may result in a conviction, whether that conviction is obtained by judicial or administrative means.

Together, then, the original twin aims of the exclusionary rule suggest that the benefits of applying the exclusionary rule may outweigh the costs. Certainly, the exclusionary rule is not a remedy per se and should not be used in all cases with all persons. Protecting the public from drunk drivers through quick and decisive action is necessary and sound as a matter of public policy. Yet the rights afforded through the Fourth Amendment are so essential that they require a long look into the efficacy of the state's use of improperly obtained evidence as well as the general deterrence or augmentation of the existing deterrence allowed by the rule's application.

VI. CONCLUSION

In *Riche v. Director of Revenue*, the Missouri Supreme Court declined to apply the exclusionary rule in an administrative driver's license suspension hearing. In so doing, it valued the safety of the public, appreciated the need to remove drunk drivers from the roads quickly, and cited the lack of deterrence the rule would achieve if the rule were applied in administrative settings.

The result achieved, however, allows illegally obtained evidence to be used in proceedings similar in nature and effect to a criminal proceeding for the same offense. Therefore, the court's holding may open a trap door through which illegally obtained evidence may go; if before a vehicular stop the officer had reasonable suspicion, the prosecutor may proceed in a criminal case. If no

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courts have always allowed vehicular stops based on reasonable suspicion. However, the Missouri Supreme Court's ruling that the exclusionary rule does not apply in administrative suspension hearings means, essentially, that no justification is needed. If the officer stops the driver with no suspicion at all, but obtains probable cause to arrest *after* pulling a car over, the driver will be able to apply the exclusionary rule in a criminal case to suppress any evidence obtained from the illegal stop. In an administrative proceeding, however, the evidence upon which the officer made the probable cause determination (evidence obtained after illegally stopping a car) will still be admitted. The state can then proceed against the driver in an administrative hearing, while knowing that a criminal prosecution would be impossible.

reasonable suspicion existed, or if the evidence was obtained in some other illegal manner, the Director of Revenue may step forward to prosecute the suspect in an administrative proceeding.

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