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Supreme Court, U.S.
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No. 09-11328

IN THE SUPREME COURT OF THE UNITED STATES

WILLIE GENE DAVIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether evidence is admissible under the good-faith exception to the exclusionary rule when the evidence was obtained during a search that was conducted in objectively reasonable reliance on precedent holding such searches lawful under the Fourth Amendment, but, after the search, that precedent was overturned by this Court.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A17) is reported at 598 F.3d 1259.

JURISDICTION

The judgment of the court of appeals was entered on March 11, 2010. A petition for rehearing was denied on April 13, 2010.¹ The petition for a writ of certiorari was filed on June 8, 2010. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

¹ A timely petition for rehearing would have been due on March 25, 2010. See Fed. R. App. P. 40(a)(1). Petitioner filed a pro se letter with the court of appeals on March 29, 2010, which the court construed as a petition for rehearing and denied. See 4/13/2010 C.A. Order. That rehearing petition does not affect the timeliness of the petition for a writ of certiorari.

STATEMENT

Following a jury trial in the United States District Court for the Middle District of Alabama, petitioner was convicted of possessing a firearm after having been convicted of a felony, in violation of 18 U.S.C. 922(g)(1). He was sentenced to 220 months of imprisonment, to be followed by five years of supervised release. The court of appeals affirmed. Pet. App. A1-A17.

1. On April 27, 2007, Greenville, Alabama police officers stopped the car in which petitioner was a passenger. The driver failed field sobriety tests, was arrested, and was placed in a police vehicle. Pet. App. A2; Gov't C.A. Br. 3.

While another officer administered sobriety tests to the driver, Officer Curtis Miller asked petitioner for his name. Petitioner told Officer Miller that his name was "Ernest Harris" but did not provide any identification. The officer smelled alcohol on petitioner's breath and noted petitioner's slurred speech. Petitioner was also fidgeting with his jacket pocket, and, despite being instructed not to do so, continued to move his hands in and out of his pockets. Pet. App. A2; 4/10/2008 Report & Recommendation 2 (Docket entry No. 50); Gov't C.A. Br. 3-4.

Officer Miller ordered petitioner out of the car in order to conduct a pat-down search. When petitioner began removing his jacket, Officer Miller told him to leave the jacket on. Despite that instruction, petitioner zippered his pocket shut, removed his

jacket, and left the jacket on the front passenger seat. After conducting a pat-down search of petitioner, Officer Miller inquired of bystanders whether petitioner was in fact Ernest Harris. An onlooker identified petitioner as Willie Gene Davis, and Officer Miller confirmed through his dispatcher that this was petitioner's identity. Officer Miller arrested petitioner for providing a false name to a law-enforcement officer, handcuffed petitioner, and secured petitioner in the back of his patrol car. Officer Miller then returned to petitioner's vehicle, searched the vehicle, and found a revolver in petitioner's jacket pocket. Pet. App. A2-A3; 4/10/2008 Report & Recommendation 2; Gov't C.A. Br. 4.

The officers then impounded the vehicle because the driver and petitioner had been arrested and were suspected of drinking alcohol. Before the vehicle was towed from the scene, the officers inventoried its contents as required by Greenville Police Department policy and prepared a written inventory report. Gov't C.A. Br. 4-5, 25.

2. Following his indictment, petitioner moved to suppress the revolver. The motion was referred to a magistrate judge who, after holding an evidentiary hearing, recommended that the motion be denied. 4/10/2008 Report & Recommendation. The judge concluded that the pistol had been found during a valid search incident to arrest under New York v. Belton, 453 U.S. 454 (1981), noted that the "parties agree that current law squarely covers these facts,"

and explained that petitioner merely sought "to preserve this issue" in the event that this Court's then-pending decision in Arizona v. Gant, 129 S. Ct. 1710 (2009), "affect[s] the legality of the search in this case." 4/10/2008 Report & Recommendation 4-5. In addition, the magistrate judge determined that an inventory search had been appropriately performed "under Greenville Police policy" in light of the arrest of both passengers and the "need to impound the vehicle." Id. at 5-6. The judge concluded that "[t]he officers inevitably would have discovered the evidence in the routine inventory search that they were required to perform" under that policy. Id. at 6.

The district court adopted the magistrate judge's recommendation and denied petitioner's motion to suppress on two independent grounds. First, the court concluded that the vehicle search was a valid search incident to arrest under Eleventh Circuit precedent. 4/28/2008 Order 1-2 (Docket entry No. 63) (citing United States v. Gonzales, 71 F.3d 819, 825 (11th Cir. 1996)). Second, the court denied suppression based on the inevitable discovery doctrine. Id. at 2-3. The court noted that "the gun was discovered during a search incident to arrest and not during an inventory search," but it concluded that, "as the Magistrate Judge noted, the officers would have inevitably discovered the jacket and its gun during the inventory search had they not already been confiscated" as part of "the search incident to arrest." Id. at 2 (citation omitted). The

court explained that "the circumstances warranted impoundment of the vehicle" and that "the police did undertake an inventory search and produced an inventory record * * * pursuant to standard operating procedures." Id. at 2-3. Because the "location of the jacket was so obvious" "in plain view on the passenger seat," the court found that the jacket, "and the gun it contained, would have inevitably been discovered during the inventory search." Id. at 3.

A jury found petitioner guilty of possessing a firearm after having been convicted of a felony. Pet. App. A3.

3. On April 21, 2009 -- two days before petitioner filed his objections to the magistrate judge's report -- this Court issued its decision in Gant. Neither petitioner's objections nor the district court's decision regarding those objections, however, discussed Gant or its impact on this case.

Gant explained that lower courts across the nation had "widely understood" that this Court's decision in New York v. Belton permitted vehicle searches incident to the lawful arrest of the vehicle's recent occupant even when "there is no possibility the arrestee could gain access to the vehicle at the time of the search." Gant, 129 S. Ct. at 1718. Gant specifically recognized that the appellate cases upholding searches conducted after the vehicle's occupant had been arrested, handcuffed, and placed in a squad car "are legion." Ibid. (quoting Thornton v. United States, 541 U.S. 615, 628 (2004) (Scalia, J., concurring in the judgment)).

Gant ultimately read Belton more narrowly than the courts of appeals had done. Gant held that the search of a vehicle incident to a lawful arrest may include the vehicle's passenger compartment only if the "arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search" or if "it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.'" Gant, 129 S. Ct. at 1719 (citation omitted).

4. The court of appeals subsequently affirmed. Pet. App. A1-A17. The court "h[e]ld that the exclusionary rule does not apply when the police conduct a search in objectively reasonable reliance on our well-settled precedent, even if that precedent is subsequently overturned." Id. at A8.

The court of appeals explained that, when the officer conducted the search in this case in 2007, the search was "permitted by [its] decision in United States v. Gonzalez, 71 F.3d 819, 825 (11th Cir. 1996)." Pet. App. A2. And Gonzalez, like decisions from other courts, "had read Belton to mean that police could search a vehicle incident to a recent occupant's arrest regardless of the occupant's actual control over the passenger compartment." Id. at A4; see id. at A16. The court of appeals concluded that Gant "rejected that prevailing reading of Belton," id. at A4, and that a Supreme Court decision like Gant that "constru[es] the Fourth Amendment [must] be applied retroactively

to all convictions that [are] not yet final at the time the decision was rendered." Id. at A5-A6 (quoting United States v. Johnson, 457 U.S. 537, 562 (1982)). The court accordingly determined that the search in this case was unlawful because it "violated Davis's Fourth Amendment rights as defined in Gant." Id. at A6.

The court of appeals also concluded, however, that its Fourth Amendment holding did not "dictate the outcome of th[e] case" because the question of suppression "is 'an issue separate from the question whether the Fourth Amendment'" was violated. Pet. App. A7 (quoting United States v. Leon, 468 U.S. 897, 906 (1984)). The exclusionary rule's remedy of suppression, the court explained, "is not an individual right." Id. at A11 (quoting Herring v. United States, 129 S. Ct. 695, 700 (2009)). Instead, suppression is appropriate "only where it 'result[s] in appreciable deterrence'" and "'the benefits of deterrence * * * outweigh the costs.'" Ibid. (quoting Herring, 129 S. Ct. at 700) (brackets in original). In other words, suppression "turns on the culpability of the police and the potential of exclusion to deter wrongful police conduct" and "should not be applied[] to deter objectively reasonable law enforcement activity." Ibid. (quoting Herring, 129 S. Ct. at 698, and Leon, 468 U.S. at 919, respectively). Based on those principles, the court held that suppression was unwarranted because "the exclusionary rule is justified solely by its potential to

deter police misconduct"; the "offending officer reasonably relied on [the court of appeals'] well-settled precedent"; and "'penalizing the officer for the court's error'" in applying Belton before Gant "'cannot logically contribute to the deterrence of Fourth Amendment violations.'" Id. at A12-A13 (quoting Leon, 468 U.S. at 921) (brackets omitted).

The court of appeals explained that it "join[ed] the Fifth and Tenth Circuits" in concluding that the good-faith exception to the exclusionary rule applies when "the police have reasonably relied on clear and well-settled precedent." Pet. App. A14 (discussing United States v. McCane, 573 F.3d 1037 (10th Cir. 2009), cert. denied, 130 S. Ct. 1686 (2010), and United States v. Jackson, 825 F.2d 853 (5th Cir. 1987) (en banc), cert. denied, 484 U.S. 1011, and 484 U.S. 1019 (1988)). And although the court acknowledged that the Ninth Circuit had held otherwise and created a circuit "split on the issue," it concluded that the Ninth Circuit's reasoning was not "persuasive." Id. at A7-A10 (discussing United States v. Gonzalez, 578 F.3d 1130 (9th Cir. 2009), reh'g denied, 598 F.3d 1095 (2010), petition for cert. pending, No. 10-82 (filed July 14, 2010)).

The court of appeals noted the district court's separate "conclu[sion] that [the] police would inevitably have discovered [petitioner's] gun during an inventory search." Pet. App. A3 n.1. But in light of its "holding with respect to the exclusionary

rule's good-faith exception," the court of appeals found it "unnecessary to address the inventory-search issue." Ibid.

ARGUMENT

Petitioner contends (Pet. 5-17) that this Court's review is warranted to resolve a conflict of authority on whether the good-faith exception to the exclusionary rule applies when law-enforcement officers conduct a search in objectively reasonable reliance on court of appeals precedent that is subsequently overturned by this Court. The court of appeals correctly held that suppression is unwarranted in those circumstances. Although the United States agrees with petitioner that the question presented is an important and recurring one on which there is a conflict among the courts of appeals and state supreme courts, this case is not a good vehicle to resolve that question. Therefore, no further review is warranted.²

1. In United States v. Gonzalez, No. 10-82, the government has petitioned this Court for a writ of certiorari on the question presented in this case. The government's petition in Gonzalez explains that the suppression of evidence from a search is not warranted when, as here, law-enforcement officers conducted the search in objectively reasonable reliance on binding appellate

² In the alternative, this Court may wish to hold this petition pending its disposition of the government's petition for a writ of certiorari in United States v. Gonzalez, No. 10-82 (filed July 14, 2010).

precedent that, after the search, is overturned by this Court. Pet. at 10-17, Gonzalez, supra (filed July 14, 2010).³ In such circumstances, suppression cannot serve the sole purpose of the exclusionary rule, which is "to deter deliberate, reckless, or grossly negligent conduct" by law-enforcement officers. Herring v. United States, 129 S. Ct. 695, 702 (2009). The government also explained in Gonzalez that the question presented is an important and recurring one that has divided the federal courts of appeals and state supreme courts and that remains pending in numerous cases. Pet. at 17-20, Gonzalez, supra; see Reply at 6-9, Gonzalez, supra.

2. This case, however, is not a good vehicle to resolve the question presented and need not be held pending resolution of the petition in Gonzalez because the evidence that petitioner seeks to suppress is independently admissible under the inevitable-discovery exception to the exclusionary rule. The judgment below thus may be affirmed on those alternative grounds without reaching the question presented. See Schiro v. Farley, 510 U.S. 222, 228-229 (1994) (a respondent may "rely on any legal argument in support of the judgment below"); accord Bennett v. Spear, 520 U.S. 154, 166-167 (1997); Washington v. Yakima Indian Nation, 439 U.S. 463, 476 n.20 (1979).

³ The government's petition for a writ of certiorari and reply in Gonzalez (No. 10-82) are publicly available at <http://www.justice.gov/osg/briefs/2010/2pet/7pet/toc3index.html>.

The inevitable-discovery doctrine permits evidence to be admitted in a criminal trial, even when it was not lawfully seized, if the government establishes that "the information ultimately or inevitably would have been discovered by lawful means." Nix v. Williams, 467 U.S. 431, 444 (1984). The doctrine reflects the judgment that "the interest of society in deterring unlawful police conduct and the public interest in having juries receive all probative evidence of a crime are properly balanced by putting the police in the same, not a worse, position that they would have been in if no police error or misconduct had occurred." Id. at 443-444.

In this case, the car in which petitioner was a passenger was stopped on a public street and, following the arrest of all occupants, the car was impounded. The Greensville Police Department's inventory-search policy required the officers to inventory the vehicle's contents before it was towed from the scene. Gov't C.A. Br. 25. The district court expressly found that the inventory search here "was conducted pursuant to [those] standard operating procedures," and it further held that officers were justified in impounding the car because all of its occupants had been arrested and were under the influence of alcohol. 4/28/2008 Order 2-3 (Docket entry No. 63). In light of those findings and the "undisputed [fact] that the jacket was lying in plain view on the passenger seat," the district court specifically found that the "[jacket], and the gun it contained, would have

inevitably been discovered during the inventory search." Id. at 3. Those fact-bound findings are correct and independently justify the judgment below.

CONCLUSION

The petition for a writ of certiorari should be denied. Alternatively, the Court may wish to hold this petition pending its disposition of the petition in Gonzalez, No. 10-82.

Respectfully submitted.

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SEPTEMBER 2010

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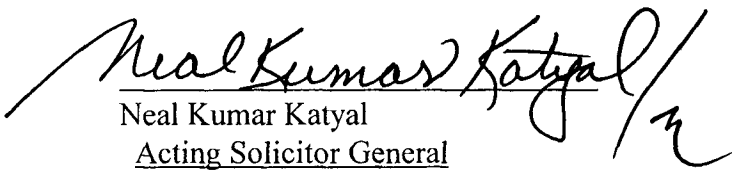
CERTIFICATE OF SERVICE

It is hereby certified that all parties required to be served have been served with copies of the **BRIEF FOR THE UNITED STATES IN OPPOSITION**, via email and first-class mail, postage prepaid, this 15th day of September, 2010.

[See Attached Service List]

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September 15, 2010

Due to the continuing delay in receiving incoming mail at the Department of Justice, in addition to mailing your brief via first-class mail, we would appreciate a fax or email copy of your brief. If that is acceptable to you, please fax your brief to Emily C. Spadoni, Supervisor Case Management, Office of the Solicitor General, at (202) 514-8844, or email at **SupremeCtBriefs@USDOJ.gov**. Ms. Spadoni's phone number is (202) 514-2217 or 2218. Thank you for your consideration of this request.

09-11328
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