

No. **0911328**

IN THE
SUPREME COURT OF THE UNITED STATES

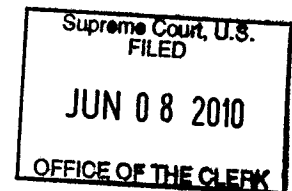
WILLIE GENE DAVIS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

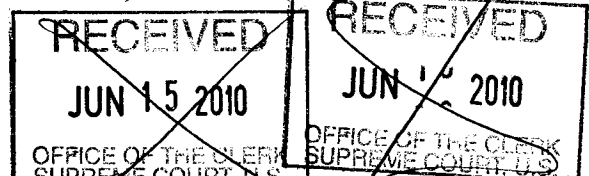
Respondent.



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

MOTION FOR LEAVE TO PROCEED ON PETITION FOR
WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE UNITED STATES IN FORMA PAUPERIS

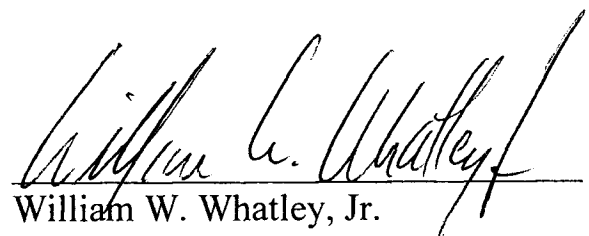
COMES NOW, Your Petitioner, Willie Gene Davis, by and through his Attorney of Record, William W. Whatley, Jr., and moves this Honorable Court to grant him this Motion for Leave to Proceed *In Forma Pauperis*, pursuant to Rule 39, Rules of the Supreme Court. As grounds therefore, Petitioner Davis avers to this Honorable Court that he has significant, meritorious, constitutional claims to



present to this Court and he is without sufficient funds to pay the costs of this case. In further support of this motion, Petitioner Davis avers that counsel of record was appointed by the United States Court of Appeals for the Eleventh Circuit pursuant to the Criminal Justice Act of 1964, 18 U.S.C. §3006A, in February, 2009. Petitioner Davis had previously been declared indigent by the United States District Court for the Middle District of Alabama before his conviction.

WHEREFORE, PREMISES CONSIDERED, Petitioner Davis, by and through counsel, moves this Honorable Court to grant this Motion to Proceed *In Forma Pauperis* in his Petition for Writ of Certiorari to this Court.

Respectfully submitted this the 8th day of June, 2010.



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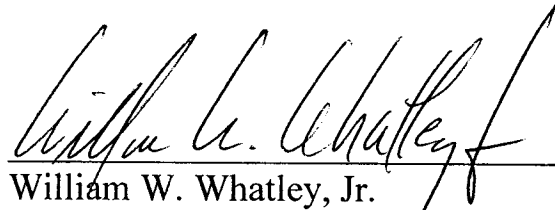
CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon:

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No. **0911328**

ORIGINAL

IN THE
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WILLIE GENE DAVIS,

Petitioner,

VS.

UNITED STATES,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

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QUESTION PRESENTED

In United States v. Leon, 468 U.S. 897 (1984), this Court created a good-faith exception to the exclusionary rule of the Fourth Amendment. The Court has expanded the good-faith exception over time, most recently in Herring v. United States, ___ U.S. ___, 129 S.Ct. 695 (2009). Petitioner asks the Court to resolve a deepening split in the lower courts over whether the good-faith exception applies to changing interpretations of law. The question presented is this:

“Whether the good-faith exception to the exclusionary rule applies to a search authorized by precedent at the time of the search that is subsequently ruled unconstitutional.”

PARTIES TO THE PROCEEDING

Petitioner is Willie Gene Davis, an individual. Respondent is the United States.

LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- All parties do not appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI

Mr. Willie Gene Davis respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINION BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit appears at Appendix A to the petition. United States v. Davis, ___ F.3d ___ (11th Cir. 2010). The United States District Court for the Middle District of Alabama overruled Petitioner Davis' objection to the Magistrate Judge's decision to deny Petitioner Davis' Motion to Suppress the search of the vehicle.

JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Eleventh Circuit affirmed Petitioner Davis' conviction and upheld the denial of the motion to suppress by the United States District Court for the Middle District of Alabama by opinion dated March 11, 2010. United States v. Davis, ___ F.3d ___ (11th Cir. 2010). A copy of that decision appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

RELEVANT CONSTITUTIONAL PROVISION

The Fourth Amendment to 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.”

STATEMENT OF THE CASE

Petitioner Willie Gene Davis (Davis) was charged in the United States District Court for the Middle District of Alabama in a one count indictment with felon in possession of a firearm. (Case No. 2:07CR248-WKW) The case against Davis went to trial and on May 13, 2008, the jury returned a verdict finding Davis guilty of the offense as indicted. Davis was sentenced on November 6, 2008 to a term of imprisonment of 220 months. Davis' direct appeal to United States Court of Appeals for the Eleventh Circuit was decided on March 11, 2010, with that court determining that Davis' constitutional rights were violated by the search but refusing to apply the exclusionary rule. (Appendix A) This Petition for Certiorari ensued.

SUMMARY OF ARGUMENT

The District Court below should have granted Davis' Motion to Suppress since the search of the vehicle was unreasonable under the Fourth Amendment to the United States Constitution. This Court's recent decision in Arizona v. Gant, ___ U.S. ___, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009) finding that law enforcement is not authorized to conduct a warrantless vehicle search incident to a recent occupant's arrest after the arrestee has been secured and cannot access the interior of the vehicle controls Davis' case. This Court's previous decisions

construing New York v. Belton, 453 U.S. 454 (1981) on this specific issue guided the District Court in making the decision to deny Davis' motion to suppress.

Gant expressly states that "Construing Belton broadly to allow vehicle searches incident to any arrest would serve no purpose except to provide a police entitlement, and it is anathema to the Fourth Amendment to permit a warrantless search on that basis." Gant, 173 L.Ed.2 at 499. The facts in this case demonstrate that Davis was arrested for providing a false name to a law enforcement officer and after he was placed in handcuffs and secured in the back of a patrol unit¹, the officer returned to the vehicle in which Davis had been a passenger and searched a jacket that Davis had been wearing while in the vehicle. These acts demonstrate that this constituted an unreasonable search and the evidence should have been suppressed.

¹The driver of the vehicle had already been arrested and placed in another squad car leaving no one with access to the vehicle other than law enforcement. Davis, at 3.

REASONS FOR GRANTING THE PETITION

The Court should grant certiorari to resolve the deepening split among the lower courts and this Court about whether the good-faith exception applies when a search that was considered lawful at the time it occurred is later ruled unconstitutional.

This issue concerning application of Fourth Amendment law arises every time a court issues a ruling in a criminal defendant's favor that departs unexpectedly from earlier decisions. Defendants with similar cases still pending on direct appeal attempt to raise the new ruling in support of suppression of the evidence in their cases. The question is, does the new case apply in full force so that the evidence is suppressed or does the good-faith exception to the exclusionary rule apply so that the evidence is admitted?

A deepening circuit split has emerged to answer this particular question. The Eleventh Circuit, the Fifth Circuit and the Tenth Circuit have held that the good-faith exception applies in such settings. *See* United States v. Davis, ___ F.3d ___ (11th Cir. 2010); United States v. Jackson, 825 F.3d 853 (5th Cir. 1987); United States v. McCane, 573 F.3d 1037 (10th Cir. 2009). On the other hand the Ninth Circuit has held that the good-faith exception does not apply. *See* United States v. Gonzalez, 578 F.3d 1130 (9th Cir. 2009), *reh 'g and reh 'g en banc denied*, 598 F.3d 1095 (9th Cir. 2010). The Seventh Circuit and the First Circuit have taken a

position that applies the good-faith exception in some circumstances, but not others. *See* United States v. Real Property Located at 15324 County Highway E., 332 F.3d 1070 (7th Cir. 2003); United States v. Brunette, 256 F.3d 14, 19 (1st Cir. 2001).

Additionally, two state Supreme Courts have held that the good-faith exception applies in such settings. *See* State v. Ward, 604 N.W.2d 517 (Wis. 2000); State v. Herrick, 588 N.W.2d 847 (N.D. 1999). One state Supreme Court has recently held that the good-faith exception does not apply. *See* People v. McCarty, No. 09-SA-161, Slip op. (Colo., May 10, 2010). Very recently the District of Columbia Court of Appeals rejected a good-faith exception to the exclusionary rule based on Gant. United States v. Debruhl, No. 09-CO-1208, slip op. (D.C. April 22, 2010).

This Court should grant the petition to resolve the disagreement in the lower courts.

I. A DEEPENING CIRCUIT SPLIT EXISTS ON WHETHER THE GOOD-FAITH EXCEPTION EXTENDS TO RELIANCE ON OVERTURNED LAW: THREE CIRCUITS CONCLUDE THAT IT DOES; ONE CIRCUIT CONCLUDES THAT IT DOES NOT; AND TWO CIRCUITS CONCLUDE IT DEPENDS ON WHETHER A WARRANT WAS OBTAINED.

(a) Good-Faith Exception Recognized: Eleventh Circuit, Tenth Circuit, Fifth Circuit and two state Supreme Courts.

The Eleventh Circuit adopted the good-faith exception in the decision below, refusing to apply the exclusionary rule and allowing the admission of evidence obtained in reasonable reliance on circuit precedents. United States v. Davis, ___ F.3d ___ (11th Cir. 2010). After determining that “There can be no serious dispute that the search here violated Davis’s Fourth Amendment rights as defined in Gant.” Davis, at 6, the Eleventh Circuit ruled that the search was objectively reasonable under “then-binding precedent.” Davis, at 17.

Addressing the same issue, the Tenth Circuit stated: “when law enforcement officers act in objectively reasonable reliance upon the settled law of a United States Court of Appeals” that is subsequently recognized as “unconstitutional” by a United States Supreme Court decision, the good-faith exception applies. United States v. McCane, 573 F.3d 1037, 1045 (10th Cir. 2009). The Fifth Circuit in

United States v. Jackson, 825 F.3d 853 (5th Cir. 1987) overturned Fifth Circuit precedent that had previously allowed warrantless searches at a checkpoint under the border search exception to the Fourth Amendment. The *en banc* decision in Jackson held that the checkpoint searches were unconstitutional, but the court then applied the good-faith exception and affirmed the convictions based on the officers' reasonable reliance on Fifth Circuit law. 573 F.3d at 866. *See also* United States v. Morgan, 835 F.2d 79, 80-81 (5th Cir. 1987)(applying good-faith exception for changed interpretations of law recognized by Jackson).

This position has been adopted by two state supreme courts. *See* State v. Ward, 604 N.W.2d 517 (Wis. 2000); State v. Herrick, 588 N.W.2d 847 (N.D. 1999). These decisions involved “no-knock” searches that had been allowed by state court precedents authorizing no-knock warrants in all felony drug investigations prior to this Court’s decision in Richards v. Wisconsin, 520 U.S. 385 (1997).

Following the Richards decision, defendants attempted to invoke the exclusionary rule in cases that could not satisfy the case-by-case standard. The Supreme Court of Wisconsin and the Supreme Court of North Dakota each held that the good-faith exception applied to searches before Richards in light of state court precedents allowing no-knock searches. *See* Ward, 604 N.W.2d at 749-50, Herrick, 588 N.W.2d at 850-51.

(b) No Good-Faith Exception: Ninth Circuit, and one state Supreme Court and the District of Columbia Court of Appeals

Taking the opposite position, the Ninth Circuit has flatly rejected the good-faith exception for changing law in a case with facts nearly identical to those in this petition. See United States v. Gonzalez, 578 F.3d 1130 (9th Cir. 2009), *reh'g denied*, 598 F.3d 1095 (9th Cir. 2010). Just as in this petition, Gonzalez involved a search that complied with circuit precedent when it occurred but was later ruled unlawful by this Court's decision in Arizona v. Gant, ___ U.S. ___, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009). Gonzalez was arrested and placed in the back of the squad car at a traffic stop. A search of the car incident to his arrest discovered a pistol in the glovebox. The Ninth Circuit initially affirmed the denial of the motion to suppress based on New York v. Belton, 453 U.S. 454 (1981). Following this Court's decision in Gant, the Gonzalez case was remanded to the Ninth Circuit which held that the good-faith exception did not apply and reversed the conviction.

The Ninth Circuit reasoned that this Court's decisions in United States v. Johnson, 457 U.S. 537 (1982) and Griffith v. Kentucky, 479 U.S. 314 (1987), are precedent for the decision not to apply a good-faith exception. "To hold that Gant may not be fully applied here, as the Government urges, would conflict with the Court's retroactivity precedents." Gonzalez, 578 F.3d at 1132. The Ninth Circuit

notes this Court's position:

We conclude, however, that this case should be controlled by long-standing precedent governing the applicability of a new rule announced by the Supreme Court while a case is on direct review. This Court has held that a "decision of this Court construing the Fourth Amendment is to be applied retroactively to all convictions that were not yet final at the time the decision was rendered." United States v. Johnson, 457 U.S. 537, 562 (1982) and Griffith v. Kentucky, 479 U.S. 314, 328 (1987)(finding that even decisions constituting a "clear break" with past precedent have retroactive application). This precedent requires us to apply Gant to the current case without the overlay of an application of the good-faith exception.

Gonzalez, 578 F.3d at 1132.

On rehearing, the Ninth Circuit further noted: "When the Supreme Court clarifies the boundaries of a constitutional search in one case, in fairness, that clarification must be consistently applied to all cases that are not yet final."

Gonzalez, 598 F.3d at 1097. In conclusion the majority opinion stated: "The panel's decision is compelled by the Supreme Court's retroactivity precedents and dictated by Gant." Gonzalez, 598 F.3d at 1100.

Recently this same position has been adopted by Colorado Supreme Court and the District of Columbia Court of Appeals. In People v. McCarthy, No. 09-SA-161, slip op. (Colo., May 10, 2010) after referencing Gant, the Colorado Supreme Court affirmed the lower court's suppression of evidence found during a traffic stop in which there was "no suggestion that the defendant in this case was capable of accessing his vehicle at the time of the search." McCathy, at 13. In

response to the prosecution's argument that Gant should not be applied retroactively, the Colorado Supreme Court stated that they were "reluctant to expand the good-faith exception to the Supreme Court's exclusionary rule beyond the limits set by that Court itself." McCathy, at 13.

The Colorado Supreme Court noted the United States v. Johnson, and Griffith v. Kentucky decisions as support for the position that Gant would apply to all cases that were not final when Gant was announced. Although noting that this Court has not recognized a good-faith exception to the exclusionary rule for "reliance on prior holdings of its own from which it has subsequently departed, much less for reliance on the erroneous interpretations of its prior holdings by lower courts" the Colorado Supreme Court aligned with the Ninth Circuit's decision in Gonzalez in the end. McCathy, at 9.

In United States v. Debruhl, No. 09-CO-1208, slip op. (D.C. April 22, 2010), the District of Columbia Court of Appeals, in another remarkably similar traffic stop to Petitioner Davis' case, in which all the occupants of the vehicle had been removed and secured before the search began, addressed application of Gant. After noting that the officer's reliance on Belton as basis for the warrantless search, the District of Columbia Court of Appeals rejected a good-faith exception to the exclusionary rule. Debruhl, at 3.

With each passing day more of the lower courts will be addressing the issue

of the retroactive application of Gant to cases that were not yet final. The state courts are already addressing these issues and attempting to deal with the question of retroactive application of Gant.² The circuit courts of appeal have noted that there is a split on this issue. “We are not the first court of appeals to consider this question, but the other circuits have split on the issue.” Davis, at 7. Writing in dissent in the decision to deny rehearing in Gonzalez, Judge Bea notes: “. . . the panel has set the stage for the Supreme Court to review the scope of the exclusionary rule in light of the circuit split we have now created.” Gonzalez, 598 F.3d at 1103. (Bea, J., dissenting)

(c) No Good-Faith Exception Unless a Warrant Was Obtained: Seventh Circuit and First Circuit.

At least two circuits have taken the third approach that depends on whether law enforcement later obtained a warrant. If police seek admission of evidence that was obtained directly from a warrantless search later deemed unconstitutional by subsequent case developments, the good-faith exception does not apply.

Alternatively, the good-faith exception would apply if law enforcement use evidence from the unlawful warrantless search to create probable cause for a

²Although not a state supreme court decision, the North Carolina Court of Appeals has very recently addressed this issue and found: “It is clear that Gant applies retroactively to this case...” State v. Johnson, Slip op. at 2 (N.C. App. June 1, 2010).

search warrant.

The Seventh Circuit adopted this approach in United States v. Real Property Located at 15324 County Highway E., 332 F.3d 1070 (7th Cir. 2003). After scanning a suspect's home with a thermal imaging device without a warrant to determine if he was growing marijuana inside, the scan was used to establish probable cause for a warrant to search the home, and the police obtained a warrant for the search. The search pursuant to the warrant led to the discovery of narcotics. Based on Seventh Circuit precedent which held that use of a thermal imaging device was not a search, the Seventh Circuit initially affirmed the forfeiture against a Fourth Amendment attack. United States v. Real Property Located at 15324 County Highway E., 219 F.3d 602 (7th Cir. 2000). Following this Court's decision in Kyllo v. United States, 533 U.S. 27 (2001) holding that use of a thermal imaging device was a search, this Court vacated and remanded the Seventh Circuit's decision. On remand the Seventh Circuit held that the good-faith exception applies only if police obtain a warrant following a warrantless search later deemed unconstitutional. United States v. Real Property Located at 15324 County Highway E., 332 F.3d at 1075-1076.

This mixed approach was justified according to the Seventh Circuit on the ground that if a magistrate judge evaluates the conduct of the officers and approves the search warrant, there is no misconduct by the officers that would

justify suppression. A magistrate was determined to be in “a relatively better position to divine the as-yet unannounced unconstitutionality of the thermal imaging scan” than the officers. United States v. Real Property Located at 15324 County Highway E., 332 F.3d at 1075.

In the First Circuit, when the government has obtained a warrant the good-faith exception has applied by considering the state of case law at the time the search took place. United States v. Brunette, 256 F.3d 14, 19 (1st Cir.2001)(“the uncertain state of the law at the time made reliance on the warrant objectively reasonable” even though the warrant was held unlawful in precedents after the search occurred) Alternatively, the First Circuit has rejected the application of a good-faith exception when the government has not obtained a warrant. United States v. Curzi, 867 F.2d 36, 44 (1st Cir. 1989).

II. THE DECISION OF THE ELEVENTH CIRCUIT COURT CONFLICTS WITH THIS COURT’S PRECEDENTS.

Certiorari should be granted because the decision of the Eleventh Circuit Court of Appeals in Petitioner Davis’ case conflicts with precedents of this Court. As noted by the Colorado Supreme Court in McCathy, this Court has not recognized a good-faith exception to the exclusionary rule for “reliance on prior

holdings of its own from which it has subsequently departed, much less for reliance on the erroneous interpretations of its prior holdings by lower courts.”

McCathy, at 9. This Court has addressed whether good-faith reliance on overruled Fourth Amendment caselaw provides a basis to affirm convictions obtained in violation of the Fourth Amendment.

In United States v. Johnson, 457 U.S. 537 (1982) the question was whether Payton v. New York, 445 U.S. 573 (1980) should be applied retroactively to exclude evidence in cases pending on direct appeal. The government had argued that the exclusionary rule should not apply to evidence seized in good-faith reliance on pre-Payton law. This Court noted that the Government’s position would eliminate all Fourth Amendment rulings from retroactive application and stated: “Failure to accord *any* retroactive effect to Fourth Amendment rulings would encourage police or other courts to disregard the plain purport of our decisions and to adopt a let’s wait until its decided approach.” Johnson, 457 U.S. at 561. This Court ruled that Payton should apply to all those with cases on direct review. Johnson, 457 U.S. at 562.

In Griffith v. Kentucky, 479 U.S. 314 (1987), which was decided after recognition of the good-faith exception in United States v. Leon, 468 U.S. 897 (1984), this Court reaffirmed the Johnson decision that “subject to [certain exceptions], a decision of this Court construing the Fourth Amendment is to be

applied retroactively to all convictions that were not yet final at the time the decision was rendered.” Griffith, 479 U.S. at 324. As in Johnson, this Court considered and rejected “reliance by law enforcement authorities on the old standards” as a reason not to apply a Fourth Amendment decision retroactively.

Griffith, 479 U.S. at 324-325. This Court clearly stated:

We therefore hold that a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final, with no exception for cases in which the new rule constitutes a “clear break” with the past.

Griffith, 479 U.S. at 328.

In Gant, this Court discussed the impact of good-faith reliance on precedents. In dissent Justice Alito noted that the Court’s decision “will cause the suppression of evidence gathered in many searches carried out in good-faith reliance on well-settled case law.” Gant, 129 S.Ct. at 1726. (Alito, J., dissenting)

The majority thought reliance on precedent would not trump constitutional rights:

The fact the law enforcement community may view the State’s version of the Belton rule as an entitlement does not establish the sort of reliance interest that could outweigh the countervailing interest that all individuals share in having their constitutional rights protected. If it is clear that a practice in unlawful, individuals’ interests in its discontinuance clearly outweighs any law enforcement “entitlement” to its persistence.

Gant, 129 S.Ct. at 1722-1723.

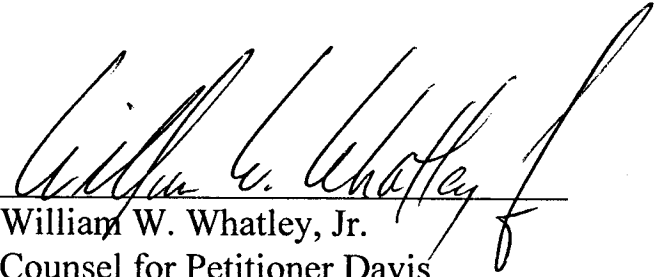
Considering the opinions for both the majority and the dissent in Gant, it appears that both sides assumed that suppression would follow from retroactive

application of the exclusionary rule, although none of the opinions expressly acknowledged or addressed that assumption. United States v. Debruhl, at 9. The final outcome in Gant is indicative of this position as well – the Arizona Supreme Court had not simply declared the search unconstitutional, but had also ordered the exclusion of the evidence. By affirming the Arizona Supreme Court’s decision, this Court necessarily affirmed the exclusion of the evidence. Gonzalez, 598 F.3d at 1100.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted with the 8th day of June, 2010.

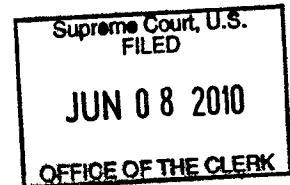
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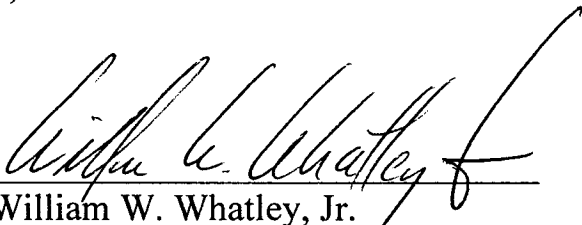
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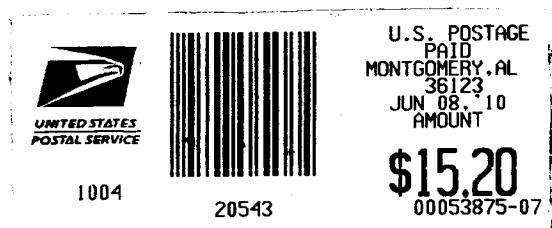
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UNITED STATES,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

APPENDIX

EXHIBIT

DESCRIPTION OF DOCUMENT

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United States v. Davis, ___ F.3d ___ (11th Cir.2010)

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 08-16654

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ELEVENTH CIRCUIT
MARCH 11, 2010
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D. C. Docket No. 07-00248-CR-W-N

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILLIE GENE DAVIS,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Alabama

(March 11, 2010)

Before TJOFLAT, BARKETT and KRAVITCH, Circuit Judges.

KRAVITCH, Circuit Judge:

Police arrested Willie Gene Davis after a traffic stop and searched the car in which he was riding as permitted by our decision in *United States v. Gonzalez*, 71 F.3d 819, 825 (11th Cir. 1996). On evidence obtained from that search, Davis was convicted for the unlawful possession of a firearm. During the pendency of his appeal to this court, the Supreme Court overturned *Gonzalez* in *Arizona v. Gant*, 129 S. Ct. 1710 (2009). We now decide whether the Fourth Amendment's exclusionary rule requires the suppression of evidence obtained from the search.

I

During a routine traffic stop in 2007, Sergeant Curtis Miller asked Willie Davis, the vehicle's only passenger, for his name. After a pause, Davis identified himself as "Ernest Harris." Miller could smell alcohol on Davis's breath, and he noticed Davis fidgeting with his jacket pockets. When the driver of the vehicle failed her field sobriety tests, Miller asked Davis to step out of the car.

As Davis exited the vehicle, he started to take off his jacket. Miller told him to leave it on, but Davis removed the jacket anyway and left it behind on the seat. Miller checked Davis for weapons and took him to the rear of the vehicle, where he asked a crowd of bystanders whether Davis's name was really Ernest Harris.

The bystanders gave Davis's true name, which Miller verified with the police dispatcher, using Davis's birth date.

Miller arrested Davis for giving a false name and placed him, handcuffed, in the back of his patrol car. The driver of the vehicle was also arrested, handcuffed, and placed in a separate patrol car. Once the vehicle's occupants had been secured, Miller searched it and found a revolver in one of Davis's jacket pockets.

After his indictment for possessing a firearm in violation of 18 U.S.C. § 922(g)(1), Davis filed a motion to suppress the gun. He conceded that our precedent required the court to deny his motion, but he moved to preserve the issue for appeal in light of the Supreme Court's grant of certiorari in *Arizona v. Gant*, 128 S. Ct. 1443 (2008). The district court denied his motion on the ground that Sergeant Miller had found the gun during a valid search incident to arrest.¹ Following a jury trial, Davis was convicted and sentenced to 220 months in prison.

II

In *New York v. Belton*, 453 U.S. 454, 460 (1981), the Supreme Court held “that when a policeman has made a lawful custodial arrest of the occupant of an

¹ The district court also concluded that police would inevitably have discovered the gun during an inventory search. Given our holding with respect to the exclusionary rule's good-faith exception, we find it unnecessary to address the inventory-search issue.

automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile.” In so holding, the Court purported to apply the limiting rationale of its decision in *Chimel v. California*, 395 U.S. 752 (1969), which had “established that a search incident to an arrest may not stray beyond the area within the immediate control of the arrestee.” *Belton*, 453 U.S. at 460. In its attempt to craft a “workable rule,” however, the Court assumed “that articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within ‘the area into which an arrestee might reach in order to grab a weapon or evidentiary [item].’” *Id.* (alteration in original) (quoting *Chimel*, 395 U.S. at 763).

We, like most 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. *See, e.g., Gonzalez*, 71 F.3d at 825. As the Supreme Court later explained, its opinion in *Belton* was “widely understood to allow a vehicle search incident to the arrest of a recent occupant even if there [was] no possibility the arrestee could gain access to the vehicle at the time of the search.” *Gant*, 129 S. Ct. at 1718.

In *Arizona v. Gant*, the Court rejected that prevailing reading of *Belton*: “We now know that articles inside the passenger compartment are rarely within

the area into which an arrestee might reach, and blind adherence to *Belton*'s faulty assumption would authorize myriad unconstitutional searches.” 129 S. Ct. at 1723 (quotation marks and citation omitted). The Court replaced our interpretation of *Belton* with the following rule: “Police may search a vehicle incident to a recent occupant’s arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest.” *Id.*

Davis now relies on *Gant* to argue that the search after his arrest violated the Fourth Amendment and, therefore, that the gun recovered from his jacket should have been suppressed. The government responds that we should not retroactively apply the exclusionary rule to searches conducted in good-faith reliance on our precedent.

The retroactivity of a constitutional decision and the scope of the good-faith exception to the exclusionary rule are questions of law that we review *de novo*. *Glock v. Singletary*, 65 F.3d 878, 882 (11th Cir. 1995); *United States v. Martin*, 297 F.3d 1308, 1312 (11th Cir. 2002).

III

Although the Supreme Court’s retroactivity doctrine has a complicated history, *see United States v. Johnson*, 457 U.S. 537, 542–48 (1982), it is now

settled that “a decision of [the Supreme] Court construing the Fourth Amendment is to be applied retroactively to all convictions that were not yet final at the time the decision was rendered,” *id.* at 562, “with no exception for cases in which the new rule constitutes a ‘clear break’ with the past,” *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987).² *Accord Glazner v. Glazner*, 347 F.3d 1212, 1217 (11th Cir. 2003) (“[F]or newly announced rules governing criminal prosecutions, the Supreme Court has completely rejected both pure prospectivity, which occurs where a court gives a newly announced rule no retroactive effect, and modified prospectivity, which occurs where a court applies a newly announced rule retroactively on a case by case basis.”). Because Davis’s case was pending on direct appeal when *Gant* was decided, the rule announced in that decision applies to his case.

There can be no serious dispute that the search here violated Davis’s Fourth Amendment rights as defined in *Gant*. First, both he and the car’s driver had been handcuffed and secured in separate police cruisers before Sergeant Miller performed the search. Second, Davis was arrested for “an offense for which police could not expect to find evidence in the passenger compartment,” *Gant*, 129 S. Ct.

² “Final” in this context refers to any “case in which a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied.” *Griffith*, 479 U.S. at 321 n.6.

at 1719, because Miller had already verified Davis's identity when he arrested him for giving a false name. *Gant* makes clear that neither evidentiary nor officer-safety concerns justify a vehicle search under these circumstances.

Our conclusion that the search violated Davis's constitutional rights does not, however, dictate the outcome of this case. "Whether the exclusionary sanction is appropriately imposed in a particular case . . . is 'an issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct.'" *United States v. Leon*, 468 U.S. 897, 906 (1984) (quoting *Illinois v. Gates*, 462 U.S. 213, 233 (1983)). Consequently, we must still decide whether the fruits of the illegal search should be suppressed.

We are not the first court of appeals to consider this question, but the other circuits have split on the issue. In the aftermath of *Gant*, the Ninth and Tenth Circuits have reached opposite conclusions as to the exclusionary rule's application in cases like this one. Compare *United States v. Gonzalez*, 578 F.3d 1130 (9th Cir. 2009) (applying the exclusionary rule to a pre-*Gant* search), with *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009) (relying on the rule's good-faith exception and refusing to require the suppression of evidence), *cert. denied*, No. 09-402 (Mar. 1, 2010). Similarly, before *Gant*, the Fifth Circuit refused to apply the exclusionary rule when police had relied in good faith on

prior circuit precedent, *United States v. Jackson*, 825 F.2d 853, 866 (5th Cir. 1987) (*en banc*), but the Seventh Circuit expressed skepticism about applying the rule's good-faith exception when police had relied solely on caselaw in conducting a search, *United States v. 15324 County Highway E.*, 332 F.3d 1070, 1076 (7th Cir. 2003).³ We now enter the fray and hold 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.

A. Retroactivity and the Exclusionary Rule

In *United States v. Gonzalez*, 578 F.3d 1130, the Ninth Circuit reversed the denial of a motion to suppress evidence obtained in violation of *Gant*, even though the search at issue had occurred before *Gant* was decided. The basis for the court's decision was that retroactivity doctrine required not only the application of *Gant*'s new substantive rule, but also the application of the same remedy.⁴

³ See also *United States v. Brunette*, 256 F.3d 14, 19–20 (1st Cir. 2001) (applying the good-faith exception to approve police reliance on a defective warrant that was issued when intercircuit caselaw governing the sufficiency of the warrant application was “unclear”).

⁴ Justice Alito's dissent in *Gant* appears to make a similar assumption. See 129 S. Ct at 1726 (Alito, J., dissenting) (“The Court's decision will cause the suppression of evidence gathered in many searches carried out in good-faith reliance on well-settled case law . . .”). But this assumption conflicts with the Court's statement that “the doctrine of qualified immunity will shield officers from liability for searches conducted in reasonable reliance” on a broad reading of *Belton*. *Id.* at 1722 n.11 (Stevens, J.) (*obiter dictum*). Because the Court has explained that qualified-immunity doctrine employs “the same standard of objective reasonableness” that defines the contours of the good-faith exception to the exclusionary rule, *Groh v. Ramirez*, 540 U.S. 551, 565 n.8 (2004) (quoting *Malley v. Briggs*, 475 U.S. 335, 344 (1986)), the majority's

Because the defendant in *Gant* had benefitted from the exclusionary rule, the court explained, ““basic norms of constitutional adjudication”” required the suppression of evidence in all non-final cases involving similarly situated defendants. *Id.* at 1132 (quoting *Griffith*, 479 U.S. at 322–23).

We do not find this reasoning persuasive. The Ninth Circuit’s decision turned, in large part, on its assumption that the Supreme Court’s affirmance in *Gant* endorsed the manner in which the state court had applied the exclusionary rule below. *See Gonzalez*, 578 F.3d at 1132–33. But the Court’s order granting Arizona’s petition for a writ of certiorari in *Gant* explicitly limited the scope of review to the constitutionality of the search. 128 S. Ct. 1443. The Court’s holdings are confined to the questions on which it grants certiorari, Sup. Ct. R. 14.1(a); *Yee v. City of Escondido*, 503 U.S. 519, 535–36 (1992), and in *Gant* neither the order granting certiorari nor the Court’s subsequent opinion discusses the exclusionary rule at all.⁵ In other words, the Court did not express approval of the exclusionary rule’s application below merely by affirming the state court’s

statement fully supports our extension of the good-faith exception to cases involving reliance on well-settled precedent.

⁵ In addition, the briefs and oral-argument transcript in *Gant* reveal that the State never argued for the application of the good-faith exception.

judgment.⁶ Before the Supreme Court, *Gant* concerned the meaning of *Belton*, not the scope of the exclusionary rule.

We also disagree with the Ninth Circuit's contention that by declining to suppress evidence in cases like this we would fail to "fully appl[y]" *Gant*, thereby "violat[ing] 'the integrity of judicial review' by turning the court into . . . a legislative body announcing new rules but not applying them." *Gonzalez*, 578 F.3d at 1132 (quoting *Griffith*, 479 U.S. at 314). Our conclusion that Sergeant Miller's search violated Davis's constitutional rights *does* fully apply *Gant* to the facts of this case. *See United States v. Peoples*, 2009 WL 3586564, at *4 (W.D. Mich. Oct. 29, 2009). We consider constitutional violations and remedies separately in the Fourth Amendment context, *Leon*, 468 U.S. at 906, and the Supreme Court has refused to tie the retroactivity of new Fourth Amendment rules to the suppression of evidence, *see id.* at 912 n.9. As the Tenth Circuit observed in *McCane*, "[t]he issue before us . . . is not whether the Court's ruling in *Gant* applies to this case, it is instead a question of the proper remedy upon application of *Gant* to this case." 573 F.3d at 1045 n.5.

⁶ The language of affirmance in *Gant* reads only: "The Arizona Supreme Court correctly held that this case involved an unreasonable search. Accordingly, the judgment of the State Supreme Court is affirmed." 129 S. Ct. at 1724.

each of its decisions expanding the exception, the Court has concluded that the unlawful police conduct at issue was neither “sufficiently deliberate that exclusion [could] meaningfully deter it” nor “sufficiently culpable that such deterrence [would be] worth the price paid by the justice system.” *Herring*, 129 S. Ct. at 702.

In this case, Sergeant Miller did not deliberately violate Davis’s constitutional rights. Nor can he be held responsible for the unlawfulness of the search he conducted. At the time of the search, we adhered to the broad reading of *Belton* that the Supreme Court later disavowed in *Gant*, and a search performed in accordance with our erroneous interpretation of Fourth Amendment law is not culpable police conduct. Law enforcement officers in this circuit are entitled to rely on our decisions, and “[p]enalizing the officer for the [court’s] error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations,” *Leon*, 468 U.S. at 921. As the Tenth Circuit explained, the general “purpose of the exclusionary rule is to deter misconduct by law enforcement officers, not other entities,” and there would be little “significant deterrent effect in excluding evidence based upon the mistakes of those uninvolved in or attenuated from law enforcement.” *McCane*, 573 F.3d at 1044.

Because the exclusionary rule is justified solely by its potential to deter police misconduct, suppressing evidence obtained from an unlawful search is

inappropriate when the offending officer reasonably relied on well-settled precedent.⁸ This conclusion is consistent with the Supreme Court's reasoning in *Leon*, in which it declined to require the suppression of evidence obtained in reliance on a facially sufficient warrant issued by a neutral magistrate judge:

First, the exclusionary rule is designed to deter police misconduct rather than to punish the errors of judges and magistrates. Second, there exists no evidence suggesting that judges and magistrates are inclined to ignore or subvert the Fourth Amendment or that lawlessness among these actors requires application of the extreme sanction of exclusion. Third, and most important, we discern no basis, and are offered none, for believing that exclusion of evidence seized pursuant to a warrant will have a significant deterrent effect on the issuing judge or magistrate.

468 U.S. at 916 (footnote omitted). We see no meaningful distinction between a magistrate judge's error in applying Supreme Court precedent to a probable-cause determination and our error in applying that same precedent to the question of a warrantless search's constitutionality. The exclusionary rule must be "restricted to those situations in which its remedial purpose is effectively advanced," *Krull*, 480 U.S. at 347, and suppressing evidence obtained in reliance on well-settled precedent would be no more effective in deterring police misconduct than would

⁸ We recognize that applying the good-faith exception under these circumstances may weaken criminal defendants' incentive to urge "new" rules on the courts, but the exclusionary rule is designed to deter misconduct, not to foster the development of Fourth Amendment law. *Cf. Herring*, 129 S. Ct. at 700 n.2 (noting that the Court has rejected a conception of the rule that "would exclude evidence even where deterrence does not justify doing so").

suppressing evidence obtained pursuant to a judge's probable-cause determination.

C. Mistakes of Law and the Good-Faith Exception

With this decision, we join the Fifth and Tenth Circuits in refusing to apply the exclusionary rule when the police have reasonably relied on clear and well-settled precedent. *See McCane*, 573 F.3d at 1045 (“[T]his court declines to apply the exclusionary rule when law enforcement officers act in objectively reasonable reliance upon the settled case law of a United States Court of Appeals.”); *Jackson*, 825 F.2d at 866 (“[T]he exclusionary rule should not be applied to searches which relied on Fifth Circuit law prior to the change of that law . . .”). We stress, however, that our precedent on a given point must be unequivocal before we will suspend the exclusionary rule's operation. We have not forgotten the importance of the “incentive to err on the side of constitutional behavior,” and we do not mean to encourage police to adopt a “let's-wait-until-it's-decided approach” to “unsettled” questions of Fourth Amendment law. *Johnson*, 457 U.S. at 561 (quoting *Desist v. United States*, 394 U.S. 244, 277 (1969) (Fortas, J., dissenting)).

The clarity of the *Belton* rule we followed before *Gant* is thus critical to our decision today. Although the Court in *Gant* insisted that *Belton* could have been interpreted in either of two ways, it also acknowledged that *Belton* was premised

on a “faulty assumption” to which the doctrine of *stare decisis* did not require adherence. *Gant*, 129 S. Ct. at 1719, 1723. Indeed, we, like most of the other courts of appeals, treated the broader, permissive reading of *Belton* as well-settled. It is precisely in situations like this, when the permissibility of a search was clear under precedent that has since been overturned, that applying the good-faith exception makes sense. When the police conduct a search in reliance on a bright-line judicial rule, the courts have already effectively determined the search’s constitutionality, and applying the exclusionary rule on the basis of a judicial error cannot deter police misconduct. *Cf. Krull*, 480 U.S. at 360 n.17. (“[T]he question whether the exclusionary rule is applicable in a particular context depends significantly upon the actors who are making the relevant decision that the rule is designed to influence.”).

Our decision here is therefore consistent with our holding in *United States v. Chanthasouxat*, 342 F.3d 1271, 1280 (11th Cir. 2003), that “the good faith exception to the exclusionary rule . . . should not be extended to excuse a vehicular search based on an *officer’s* mistake of law” (emphasis added). The justifications for the good-faith exception do not extend to situations in which police officers have interpreted ambiguous precedent or relied on their own extrapolations from existing caselaw. When the police rely on novel extensions of

our precedent, they engage in the sort of legal analysis better reserved to judicial officers, whose “detached scrutiny . . . is a more reliable safeguard against improper searches than the hurried judgment of a law enforcement officer engaged in the often competitive enterprise of ferreting out crime,” *United States v. Chadwick*, 433 U.S. 1, 9 (1977) (quotation marks and citation omitted), *quoted in Leon*, 468 U.S. at 913–14.⁹ When law enforcement officers rely on precedent to resolve legal questions as to which “[r]easonable minds . . . may differ,” *Leon*, 468 U.S. at 914, the exclusionary rule is well-tailored to hold them accountable for their mistakes.¹⁰

Although an officer’s mistake of law cannot provide objectively reasonable grounds for a search, *Chanthasouxat*, 342 F.3d at 1279, the mistake of law here was not attributable to the police. On the contrary, the governing law in this circuit unambiguously allowed Sergeant Miller to search the car. Relying on a court of appeals’ well-settled and unequivocal precedent is analogous to relying on a statute, *cf. Krull*, 480 U.S. 340, or a facially sufficient warrant, *cf. Leon*, 468 U.S. 897—not to personally misinterpreting the law.

⁹ Unlike police officers, “[j]udges and magistrates are not adjuncts to the law enforcement team.” *Leon*, 468 U.S. at 917.

¹⁰ Because reasonable minds often differ when considering merely persuasive precedents, our extension of the good-faith exception is necessarily limited to situations in which the published decisions of this court clearly dictated the constitutionality of a search.

In this case, Sergeant Miller performed a search that our contemporaneous interpretation of *Belton* clearly permitted. Had the Supreme Court not subsequently rejected that interpretation in *Gant*, we undoubtedly would have upheld the search as constitutional. Because the search was objectively reasonable under our then-binding precedent, suppressing the gun found in Davis's jacket would serve no deterrent purpose. In accordance with our holding that the good-faith exception allows the use of evidence obtained in reasonable reliance on well-settled precedent, we refuse to apply the exclusionary rule here. Davis's conviction is

AFFIRMED.

