Good News, Bad News:
**Davis v. United States**
Legal Question of the Week
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Two years ago, the U.S. Supreme Court handed down a decision in *Arizona v. Gant*, which caused no small amount of concern and consternation and even weeping and gnashing of teeth among the law enforcement community. As you know (having been told numerous times,) *Gant* severely limited the ability of a law enforcement officer to search a vehicle after the lawful arrest of an occupant. Before *Gant* and in reliance on another U.S. Supreme Court case, *New York v. Belton*, officers operated under what they understood was a bright-line rule allowing the complete search of the passenger area of an automobile whenever an occupant was arrested. After *Gant*, officers now know (having been told numerous times,) that such a search incident to arrest may only take place when either (1) the arrestee is within reaching distance of the vehicle during the search, or (2) the police have reason to believe that the vehicle contains evidence relevant to the crime of arrest.

But what about those still-pending cases across the country involving searches incident to arrest that occurred before the decision in *Gant*? Many officers had cases where they had searched a vehicle incident to arrest because they (and most everyone else) believed the law allowed it. What would happen to the evidence they had recovered? The general consensus was that unless their search fell under one of the two permissible prongs in *Gant* or they had some other legal justification for the search, this evidence would be suppressed because of the violation of the Fourth Amendment. This was the issue that faced the Supreme Court in the recent case of *Davis v. U.S.* After studying their decision, I’ve got some good news and some bad news.

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2 Consternation: (n) Feelings of anxiety or dismay, typically at something unexpected. Not to be confused with constipation which may also cause consternation.
5 This may come as a shock, but your legal adviser does not shy away from corny jokes. There is a whole category of corny jokes known as “good news, bad news” jokes. Below decks in a Roman galley, for instance, the soldier addresses the prisoners chained to their oars: “Men, the good news is that at the next port there will be food and grog for everyone. The bad news is that this afternoon the captain wants to go water skiing.”
Willie Davis was a passenger in a vehicle stopped by police in Greenville, Alabama in April of 2007 (two years B.G.\(^6\)) The driver of the vehicle was arrested for impaired driving and Mr. Davis was arrested for initially providing a false name. The police searched the vehicle incident to those arrests and found a revolver inside the pocket of a jacket belonging to Davis, who was a convicted felon and therefore ineligible to possess said revolver.

Davis’ case was still pending on appeal to the Eleventh Circuit Court of Appeals when Gant was decided. The Eleventh Circuit ruled in his case that although the search of the vehicle was a violation of Davis’ Fourth Amendment rights under the Gant ruling, the evidence should not be suppressed because applying the exclusionary rule in a situation where an officer was following the law as it existed at the time would do nothing to deter future Fourth Amendment violations.

Here’s the good news:\(^7\) the U.S. Supreme Court agreed. Upon considering the case, the Court held that “searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule.” That meant that the revolver found during the search would not be suppressed and Davis’ conviction was upheld.

To understand the Court’s decision, you have to understand the origins of the exclusionary rule. The Fourth Amendment guarantees the right to be free from “unreasonable searches and seizures,” which is great in theory, but imagine a world where evidence could be used even if it was obtained in flagrant violation of this guarantee. How would your behavior as a law enforcement officer change?\(^8\) Because the Fourth Amendment rights became mostly meaningless without some way to enforce them, the Supreme Court created the exclusionary rule. The exclusionary rule means that evidence obtained in violation of a defendant’s Fourth Amendment rights is generally excluded from being used as evidence in his or her trial.

The Court understands that the application of the exclusionary rule generates a “substantial social cost” because it often means that otherwise competent and believable evidence will be suppressed and a criminal set loose in the community without punishment. However, when the officer breaks the rules in a way that shows “deliberate, reckless, or grossly negligent disregard for Fourth Amendment rights, the deterrent value

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\(^6\) “Before Gant”

\(^7\) An artist asked the gallery owner if there had been any interest in his paintings on display at that time. “I have good news and bad news,” the owner replied. “The good news is that a gentleman inquired about your work and wondered if it would appreciate in value after your death. When I told him it would, he bought all 15 of your paintings.” “That's wonderful!” the artist exclaimed. “What's the bad news?” “The man was your doctor.”

\(^8\) Although it seems alien to a young guy like me, this world we are imagining is not that old. It was 1914 when the Supreme Court first held that the Fourth Amendment prevented the use of evidence secured through an illegal search and seizure in federal prosecutions (Weeks v. United States, 232 U.S. 383 (1914)) and it was 1961 before the exclusionary rule was applied to state cases. (Mapp v. Ohio, 367 U.S. 643 (1961))
of exclusion is strong and tends to outweigh the resulting costs.” Therefore, the Court balances the costs of excluding the evidence against the benefit of deterrence in deciding whether to apply the exclusionary rule.

The use of this balancing test is what gave rise to the federal “good faith” exception to the exclusionary rule. In U.S. v. Leon, the Supreme Court ruled that when an officer acted in good faith by reasonably relying on a search warrant which was later held to be invalid, the exclusionary rule should not apply. This exception has in later Supreme Court cases been extended to searches done pursuant to statutes that are subsequently found unconstitutional, a search made incident to an arrest made based on erroneous information in a court clerk database, a search made incident to an arrest based on incorrect information in a police maintained database, and now in Davis, a search based on binding judicial precedent that is later ruled invalid.

But now the bad news: North Carolina courts have previously held (in State v. Carter) that the good faith exception does not apply in North Carolina due to our State Constitution. As I discussed in a legal update four months ago, this means that our state courts still apply the exclusionary rule even when an officer acts in good faith. So if you have a case in state court where you made a vehicle search incident to arrest that can’t be justified under Gant or some other separate basis, the prosecutor can argue that the court should follow the Davis case but the odds are against the search being upheld unless and until the N.C. Supreme Court overrules its decision in the Carter case. You will recall from that previous legal update that the N.C. General Assembly has asked them to do just that and has added a good faith exception for violations of Chapter 15A of our state statutes.

So we’ll have to wait and see how this plays out in the North Carolina courts. But it does seem that the trend of the U.S. Supreme Court in recent years is to use the exclusionary rule only in cases where there is intentional or grossly negligent conduct by

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9 Notice I said the FEDERAL “good faith” exception – more on this in a minute.
13 Herring v. United States, 555 U.S. 135 (2009). What is most interesting about this case is that it was the negligence of law enforcement in another county that caused the mix-up. The Court held that “isolated,” “nonrecurring” police negligence is not enough to trigger the exclusionary rule.
14 Nick, an avid golfer, has a golfing buddy who is about to pass away. He asks his friend to try and let him know if there is a golf course in heaven once he gets there. Several days later, Nick gets a call from his deceased friend. “Well, what did you find out?” asks Nick. “I've got good news and bad news for you,” said the friend. “OK, what's the good news?” Nick said excitedly. “Well, there's a beautiful 36-hole golf course in heaven, and you'll have 24-hour access with your own personal caddy,” blurted out the friend! “And the bad news?” asked Nick. “You're due to tee-off this Sunday at around 10 in the morning!”
police rather than an automatic penalty for every violation of the “rules.” And that’s either good news or bad news, depending on which side you are on.

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