Davis v. United States and the Future of the Exclusionary Rule

Author : Jeff Welty

Categories : Procedure, Search and Seizure, Uncategorized

Tagged as : davis, exclusionary rule, gant, good faith

Date : June 21, 2011

Virtually all courts interpreted *Belton v. New York*, 453 U.S. 454 (1981), to authorize a law enforcement officer to search the passenger compartment of a motor vehicle incident to the arrest of any recent occupant of the vehicle. Then the Supreme Court decided *Arizona v. Gant*, 556 U.S. __ (2009), discussed here, among other places. In *Gant*, the Court dramatically curtailed the *Belton* rule, holding that an officer may *not* search the passenger compartment of a motor vehicle incident to the arrest of a recent occupant *unless* the arrestee is unsecured and could reach into the vehicle to access weapons or destroy evidence *or* there is reason to believe that evidence of the crime of arrest may be found in the vehicle.

This shift in the law meant that, in a number of cases across the country, officers conducted vehicle searches under *Belton*, found incriminating evidence, and charged defendants accordingly, only to see *Gant* come down while the cases were pending. The exultant defendants argued that *Gant* applied retroactively to pending cases, while officers bemoaned the possible exclusion of evidence that they had seized in compliance with established law.

Last week, in *Davis v. United States*, the Supreme Court addressed this set of cases and held that "searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule." In essence, the Court reasoned, officers acting under established precedent are doing nothing wrong. Since the point of the exclusionary rule is to deter police misconduct, and in this type of case there is no police misconduct to deter, there is no reason to suppress any evidence obtained by the officers: "Police practices trigger the harsh sanction of exclusion only when they are deliberate enough to yield meaningful deterrence, and culpable enough to be worth the price paid by the justice system [due to the exclusion of relevant evidence]." Thus, the Court concluded, although *Gant* does apply retroactively to cases pending when it was decided, rendering many police searches of vehicles unconstitutional, the exclusionary rule should not be applied to those searches because the searches were conducted in good faith reliance on (seemingly) settled law. Justice Alito wrote the opinion, joined by six other Justices.

The dissent – by Justice Breyer, joined by Justice Ginsburg – argued that declining to apply the exclusionary rule to this category of cases effectively undermines the retroactivity of *Gant*: if the exclusionary remedy isn't available retroactively, the dissenters reasoned, it is meaningless to say that the rule itself is retroactive. The dissenters also contended that whether there is "binding appellate precedent" on an issue is often debatable, making the majority's rule unworkable. Finally, they argued that focusing on officers' culpability risks destroying the exclusionary rule altogether, because "[i]n many, perhaps most [contested Fourth Amendment cases] the police . . . will have acted in objective good faith."

A few questions about *Davis.* First, will North Carolina's appellate courts follow *Davis*, or will they reject this good faith exception as they rejected the *Leon* good faith exception for reliance on a faulty warrant in *State v. Carter*, 322 N.C. 709 (1988)? I can imagine arguments both ways.

Second, if the state had argued for a good faith exception in *Gant*, would the Court have denied relief to the defendant in that case? I don't know how firmly established the Arizona courts' interpretation of *Belton* was, but it seems possible, at least, that the defendant in *Gant* could have won the Fourth Amendment battle but lost the exclusionary rule war.

Third, might the reasoning of *Davis* extend to at least some cases *not* governed by binding precedent? Consider a case in which an officer confronts a Fourth Amendment gray area and makes a reasonable choice, but one that a court later rules was wrong. Might the state argue that because the officer didn't do anything culpable, the exclusionary rule should not apply? Justice Sotomayor's concurrence notes that this issue was not before the Court in *Davis* but seems to suggest that she would not extend the good faith exception to the exclusionary rule to such a case. Notably, no other Justice joined her concurrence.

Finally, and more broadly, are we watching the slow evolution of the exclusionary rule from being the presumptive remedy for most Fourth Amendment violations towards being a remedy principally for intentional misconduct by officers? The majority asserts that the exclusionary rule's "sole purpose . . . is to deter future Fourth Amendment violations," and that "the deterrence benefits of exclusion vary with the culpability of the law enforcement conduct at issue." If that's so, it's easy to imagine future limitations of the exclusionary rule along the lines envisioned by the dissent. Whether that's a good thing or a bad thing, of course, will depend on your point of view.