

## Privacy Rights Take Big Hit in Supreme Court Fourth Amendment Ruling

June 17, 2011 - Among other things, the Fourth Amendment to the Constitution protects ones privacy from unwanted government supervision or intrusion. It specifically regulates what the procedures that the government must follow when conducting a search for evidence; procedures such as getting a warrant. But in a 7-2 Supreme Court ruling, those protections have now been significantly reduced. The court found that evidence collected in good faith by a police officer who was following accepted procedures could be used in a prosecution even if the search procedure was later found to be unconstitutional.

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What has been known as the "exclusionary rule" may now be on its last legs and gasping for air. In the past, the rule has been used to exclude evidence from trial when that evidence was collected in an unconstitutional manner. Police could later reintroduce excluded evidence only if they could prove that the evidence would have been discovered anyway.

But in the case *Davis vs. United States*, Justice Samuel Alito (writing for the majority) said, "Evidence obtained during a search conducted in reasonable reliance on binding precedent is not subject to the exclusionary rule." He went on to say, "It is one thing for the criminal 'to go free because the constable has blundered.' It is quite another to set the criminal free because the constable has scrupulously adhered to governing law. Excluding evidence in such cases deters no police misconduct and imposes substantial social costs."

All of the conservative justices on the court voted in the majority. They were joined by both of President Obama's Supreme Court appointees; Sonia Sotomayor and Elena Kagan.

In this specific case, Willie Davis was a passenger in a car that was pulled over by the police. The driver was alcohol impaired and arrested. When Davis exited the car, he left his coat behind. When the police conducted a search of the vehicle, they found a gun in Davis' coat and arrested him for felony gun possession. Davis was tried and sentenced to 18 years in prison.

At the time Davis went to trial another case was winding its way through the courts; *Arizona vs. Gant*. The *Gant* case was also decided by the Supreme Court. It placed significant restrictions on police searches of vehicles when someone is arrested. Unless there is a visible threat to the police, the police must now wait for a warrant to search the vehicle; and there is no guarantee that a warrant will ever be issued.

Based on the outcome of the *Gant* decision, Davis appealed. Since the gun had not been visible and posed no threat to police, it may very well not have been found if the search had been conducted using the procedures that came out of the

Gant ruling. And the search that discovered the gun was clearly unconstitutional based on the outcome of Gant. The Davis ruling creates three significant issues.

First, it applies two constitutional standards in criminal offenses. If someone has already been tried using evidence that was unconstitutionally gathered, they can't appeal based on the Gant ruling. But anyone arrested today can appeal based on the Gant ruling if evidence is gathered improperly.

Second, using this same type of logic, the court could make this double standard of justice apply to other rulings.

Third, the Davis ruling takes into account the state of mind of the police officers who are executing a search. If the officer suspects or knows that a search is unconstitutional, then evidence gathered during the search should be excluded. But if the officer thought he was obeying the law, even if the search itself is unconstitutional, the evidence gathered can still be used at trial. This appears to be a rather low standard and, in an environment where the government and the people of this country are highly polarized, this ruling could have unintended consequences; allowing the government to go on witch hunts in the hopes of developing criminal cases.

by Jim Malmberg

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