**Brief Case Sample**

Facts

Police conducted a routine traffic stop that eventually resulted in the arrests of the driver for driving while intoxicated and Davis, a passenger, for giving a false name to police.  Police handcuffed both men and put them in the back of separate patrol cars before searching the passenger compartment of the vehicle and finding a revolver inside Davis’s jacket pocket.

Procedural History

The district court denied Davis’s motion to suppress and he was convicted on the firearms charge.  While his appeal was pending, the Court decided *Arizona v. Gant*.  The Eleventh Circuit found that the search violated the Fourth Amendment under *Gant*’s new rule, but declined to apply the exclusionary rule, affirming Davis’s conviction.

Issue

Does the exclusionary rule apply to a search in compliance with binding precedent that is later overruled?

Holding / Rule

(Alito) No.  Searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule.

Reasoning

When Davis was arrested, the law in the Eleventh Circuit and most jurisdictions was that when an officer has made a lawful arrest of the occupant of a car, he may conduct a search incident to arrest of the passenger compartment of the car, regardless of whether the occupant is within arm’s reach of the vehicle.  In *Arizona v. Gant*, decided later, the Supreme Court adopted a new, two-part rule under which an automobile search incident to arrest is constitutional (1) if the arrestee is within reaching distance of the vehicle during the search; or (2) if the police have reason to believe the vehicle contains evidence relevant to the crime of arrest.  The exclusionary rule is a judicially created remedy, not compelled by the Fourth Amendment, which has the sole purpose of deterring future Fourth Amendment violations.  Moreover, the deterrence benefits must outweigh the heavy costs of excluding reliable evidence bearing on the defendant’s guilt or innocence.  Here, because the officer’s search complied with then-binding Circuit law, he was not blameworthy in any way.  The officer was merely doing his duty, and the exclusionary rule “should not be applied to deter objectively reasonable law enforcement activity.”  Nor do the Court’s retroactivity precedents compel exclusion—retroactive application operates to raise the question of whether a suppression remedy applies, but does not give an answer that question.

Sotomayor concurred in the judgment, noting that the majority’s decision does not address the question of whether exclusion would appreciably deter Fourth Amendment violations when the governing law is unsettled, and emphasizing that officer culpability is not necessary to achieve deterrence.

Breyer (joined by Ginsburg) dissented, arguing that to determine a new rule is retroactive is to determine that, at least in the normal case, a remedy exists.  Breyer also argued that if officer culpability is the touchstone, then the good faith exception will swallow the exclusionary rule because even unlawful searches are not usually the result of an officer’s intentional or negligent violation of the Fourth Amendment.