Basics of Evidence Suppression

Exclusion exacts a heavy toll on both the judicial system and society at large.[1]

In the dark ages of search and seizure law, the courts would simply suppress all evidence that was obtained in violation of the rules. But in a series of cases beginning in 1984,[2] the Supreme Court began to articulate a new rule that has evolved into the following: *Evidence may be suppressed only if the benefits of suppression outweigh its costs.*[3] This is known as the balancing-of-interests test, and it makes sense because the cost of suppresson falls heavily on the general public. As the Supreme Court observed:

> Exclusion exacts a heavy toll on both the judicial system and society at large. It almost always requires courts to ignore reliable, trustworthy evidence bearing on guilt or innocence. And its bottom-line effect, in many cases, is to suppress the truth and set the criminal loose in the community without punishment.[3]

Admittedly, suppression also serves the public because it provides officers with a strong incentive to learn and apply the rules. But they are already motivated because violations commonly result in departmental discipline, passed-over promotions, bad press, and lawsuits.[4]

Magnitude of Misconduct

To determine whether an officer's misconduct was sufficiently blameworthy to warrant the suppression of evidence, the courts will often try to classify it as intentional, grossly negligent, or inadvertent. As noted, this is because the more egregious the officer's conduct, the greater the need to deter it and the more the public would view suppression as a necessary evil. As the Supreme Court put it, To trigger the exclusionary rule, "police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that deterrence is worth the price paid by the justice system."[5]

INTENTIONAL VIOLATIONS: Suppression is almost always warranted if the officer's misconduct was "substantial and deliberate"[6] because the deterrent value of exclusion is strong and will almost always outweigh the resulting costs to the public.[7] For example, evidence obtained during a detention would surely be suppressed–regardless of the seriousness of the crime under investigation—if the officers knew they had no legitimate reason to stop the suspect.[8]

GROSS NEGLIGENCE, RECKLESS DISREGARD: Suppression is also likely if a court concludes that the officer's misconduct constituted gross negligence or that he acted in reckless disregard of whether his conduct was lawful. As the Supreme Court explained, "When the police exhibit 'deliberate,' 'reckless,' or 'grossly negligent' disregard for Fourth Amendment rights, the deterrent value of exclusion is strong and tends to outweigh the resulting costs."[9]

INADVERTENCE, ORDINARY NEGLIGENCE: In most cases, inadvertence and ordinary negligence are not sufficiently blameworthy to warrant suppression. This is because "the deterrence rationale loses much of its force" when an officer's conduct "involved only simple, isolated negligence."[10] Thus, in *Herring v. United States*, the Supreme Court ruled that "when police mistakes are the result of negligence, rather than systemic error or reckless disregard of constitutional

---

[1] *Davis v. United States* (2011) 564 U.S. 229, 237.
[2] See *United States v. Leon* (1984) 468 U.S. 897, 908; *Herring v. United States* (2009) 555 U.S. 135, 143.
[3] *Davis v. United States* (2011) 564 US 229, 237. Also see *U.S. v. Szczerba* (8th Cir.2018) 897 F.3d 929, 938 ["Over time, the Supreme Court has recalibrated its cost-benefit analysis in exclusion cases to focus on the flagrancy of the police misconduct at issue"]; *People v. Willis* (2002) 28 Cal.4th 22, 30 ["Because the exclusionary rule is a remedial device, its application is restricted to those situations in which its remedial purpose is effectively advanced. Thus, application of the exclusionary rule is unwarranted where it would not result in appreciable deterrence."].
[4] See *Davis v. United States* (2011) 564 U.S. 229, 241.
[5] *Davis v. United States* (2011) 564 U.S. 229, 238. Also see *Herring v. United States* (2009) 555 U.S. 135, 145.
[6] *United States v. Leon* (1984) 468 U.S. 897, 909.
[7] See *Davis v. United States* (2011) 564 U.S. 229, 238. Also see *U.S. v. Cha* (9th Cir. 2010) 597 F.3d 995, 1004.
[8] See *U.S. v. Shaw* (6th Cir. 2013) 707 F.3d 666, 670.
[9] See *Davis v. United States* (2011) 564 U.S. 229, 237.
[10] *Davis v. United States* (2011) 564 U.S. 229, 238. Also see *People v. Robinson* (2010) 47 Cal.4th 1104, 1129.

requirements, any marginal deterrence does not pay its way."[11] For example, the courts have refused to suppress evidence when probable cause was a "close or debatable question."[12]

Applying the law

The following are common situations in which the magnitude of police misconduct affects suppression.

DEFECTIVE SEARCH WARRANTS: Judges will sometimes issue a warrant that an appellate court later determined was defective because there was no probable cause. Nevertheless, it is unlikely that the evidence obtained during the search will be suppressed because it is ordinarily reasonable for officers to rely on a judge's legal conclusions. To a lesser extent, suppression may be unwarranted if a knowledgeable prosecutor had reviewed and approved the warrant and affidavit,[13] or if the affiant notified the judge of a potential problem with the affidavit and the judge concluded that it was nevertheless sufficient.[14]

The evidence may, however, be suppressed if the affiant knew or should have known that he did not have probable cause. As the Supreme Court observed, an incompetent affiant cannot avoid suppression by "pointing to the greater incompetence of the magistrate."[15] Suppression is also likely if a court finds that a reasonably well-trained officer would have known that the descriptions of the evidence to be seized or the place to be searched were not sufficiently specific.[16]

MISTAKES OF LAW: In the past, evidence was routinely suppressed if it was obtained as the result of an officer's mistake as the law. That changed in 2014 when the Supreme Court ruled such evidence might not be suppressed if the officer's mistaken interpretaton of the law was not unreasonable. Under such circumstances, the Court pointed out that suppression would be unwarranted because it "would serve none of the purposes of the exclusionary rule" which is to deter unreasonable actions.[17]

DATABASE ERRORS: Officers will frequently make an arrest or conduct a search based on information they received from governmental databases, such a registries of people who are wanted on outstanding warrants, or probationers who are subject to warrantless searches. If this information was incorrect, the evidence may not be suppressed unless the officers knew or should have known that the database was unreliable, or if "the police have been shown to be reckless in maintaining" the database.[18]

SEARCH INVALIDATED AFTER THE FACT: It happens that officers will conduct a search that was in accord with an existing law that was later overturned. This used to be a problem because the the Supreme Court ruled in 1987 that if a court changes the law and this change renders the conduct unlawful the evidence must be suppressed if the defendant's conviction was not yet final.[19] In other words, evidence would sometimes be suppressed if officers failed to predict changes in the rules pertaining to search and sesizure. This, of course, made no sense. So the Court decided to change the rule.

Specifically, in 2011 the Court ruled that suppression may not be suppressed if the officer's conduct was lawful under the law *when the search occurred*. As the Court explained, "Evidence obtained during a search conducted in reasonable reliance on binding precedent is not subject to the exclusionary rule."[20]

One other thing: One of the apparent consequences of implementing the balancing test was to make the so-called Good Faith Rule superflous. This is because the rule's objective was to eliminate suppresson when the officers' conduct was not sufficiently blameworthy. But because that is exactly the objective of the balancing test, there is no longer a need to consider whether officers acted in good or bad faith. Thus, the Supreme Court acknowled in 2009 that the term Good Faith was confusing and that it simply meant "objective reasonableness."[21] POV

[11] Herring v. United States (2009) 555 US 135, 147-48
[12] See *People v. Camarella* (1991) 54 Cal.3d 592, 606.
[13] See *Massachusetts v. Sheppard* (1984) 468 U.S. 981, 989; *People v. Camarella* (1991) 54 Cal.3d 592, 605, fn.5.
[14] See *Massachusetts v. Sheppard* (1984) 468 U.S. 981, 990.
[15] *Malley v. Briggs* (1986) 475 U.S. 335, 346, fn.9.
[16] See *Groh v. Ramirez* (2004) 540 U.S. 551, 558 ["the warrant did not describe the items to be seized at all"].
[17] *Heien v. North Carolina* (2014) 574 U.S. 54, 64.
[18] *Herring v. United States* (2009) 555 U.S. 135, 146-47. Also see *Arizona v. Evans* (1995) 514 U.S. 1, 15-16.
[19] *Griffith v. Kentucky* (1987) 479 U.S. 314, 328.
[20] *Davis v. United States* (2011) 564 U.S. 229, 241.
[21] *Herring v. United States* (2009) 555 U.S. 135, 142. Also see *People v. Willis* (2002) 28 Cal.4th 22, 29, fn.3.