

MSC Order: Mungo will return for 3d time to COA to determine application of exclusionary rule

26. September 2011 By Sarah Riley Howard

On September 23, 2011, the Supreme Court remanded *People v. Michael William Mungo*, No. 141160, to the Court of Appeals, for reconsideration in light of *Davis v. United States*, ___ U.S. ___, 131 S. Ct. 2419 (2011).

Davis is the case in which the U.S. Supreme Court held 7-2 that the exclusionary rule does not apply where police conduct a search in objectively reasonable reliance on binding appellate precedent. In it, the Supreme Court, writing through Justice Alito, with Justice Sotomayor concurring, and Justices Breyer and Ginsburg dissenting, held that the “sole purpose” of the Fourth Amendment exclusionary rule is to deter violations of the people’s right to be free of unlawful search and seizure. 131 S. Ct. 2426. Therefore, the Court held, if the police had an objectively reasonable belief that the search was legal based on binding appellate precedent, there is no bad behavior to deter and no grounds to apply the exclusion remedy. *Id.* at 2427. The binding appellate precedent relied on in that case was from the same Circuit.

In *Mungo*, the trial court originally excluded evidence from a search of the glove compartment in the vehicle in which Mungo was a passenger. The Court of Appeals originally reversed this decision. After *Arizona v. Gant*, which held that a search of a car cannot be “incident to arrest” if the occupant is already secured and cannot access the inside of the vehicle, the Michigan Supreme Court remanded the case for reconsideration in light of *Gant*. The Court of Appeals then affirmed the trial court. Now the Court of Appeals will have an opportunity one additional time to possibly reverse course again, unless it finds that the police’s search in *Mungo* was not “objectively reasonable” under its facts, or that Michigan law or the Michigan Constitution provides greater exclusionary rule protection than the U.S. Constitution does.

There have been no appearances by amici curiae in this matter to date.