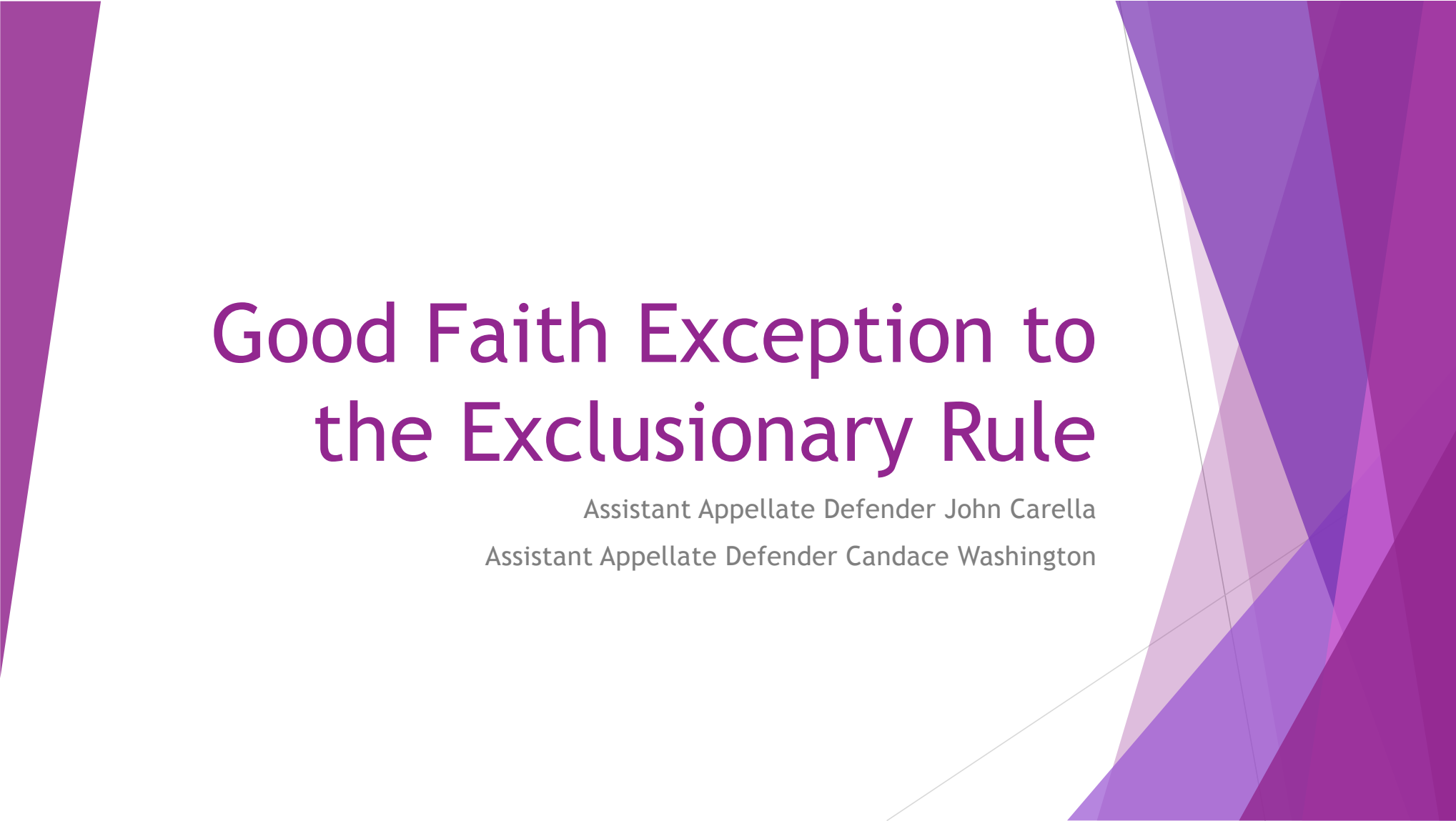




Good Faith Exception to the Exclusionary Rule

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Overview

- ▶ History of the Good Faith Exception & Exclusionary Rule
- ▶ Federal Erosion of the Exclusionary Rule and *State v. Julius*, 385 N.C. 331 (2023)
- ▶ The Current State of Good Faith and the Exclusionary Rule in N.C.
 - ▶ *State v. Rogers*, 388 N.C. 453 (2025)
 - ▶ *State v. Julius*, 925 S.E.2d 854 (N.C. Ct. App. 2026)
- ▶ Practical Points/Arguments to Make



Part I

History of the Exclusionary Rule and Good Faith Exception



United States v. Leon, 468 U.S. 897 (1984)

- ▶ Should the exclusionary rule be applied when police officers reasonably rely on a search warrant that actually wasn't supported by probable cause?
- ▶ Cost benefit analysis
- ▶ Objective standard
- ▶ Good faith exception does not apply when:
 - ▶ Law enforcement provides false information to obtain a search warrant
 - ▶ Judge or magistrate issuing the warrant abandons their neutral and detached role
 - ▶ The warrant very clearly lacks probable cause—bare bones affidavit
 - ▶ The warrant is facially defective i.e. it fails to specifically identify the place to be searched or the items to be seized

Illinois v. Krull, 480 U.S. 340 (1987)

- ▶ Expanded the application of the good faith exception
- ▶ Searches conducted in reasonable reliance on subsequently invalidated statutes
- ▶ Deterrent effect?

Arizona v. Evans, 514 U.S. 1 (1995)

- ▶ Another expanded application of the good faith exception
- ▶ Applies where officers act in reasonable reliance on police record that subsequently turns out to be erroneous
- ▶ Deterrent effect on police vs. clerks

State v. Carter, 322 N.C. 709 (1988)

- ▶ Does the North Carolina Constitution have an exclusionary rule and a good faith exception to that rule?
- ▶ Yes, the N.C. Constitution requires exclusion like the U.S. Constitution. Also noted, the statutory exclusionary rule.
 - ▶ “Under our expressed public policy since 1937, the challenged evidence should have been suppressed. N.C.G.S. § 15A-974(1) (1983).”
- ▶ No good faith exception!
 - ▶ No cost benefit analysis.
 - ▶ “The exclusionary sanction is indispensable to give effect to the constitutional principles prohibiting unreasonable search and seizure. We are persuaded that the exclusionary rule is the only effective bulwark against governmental disregard for constitutionally protected privacy rights.”



Part II

Federal Erosion of Exclusionary Rule and Julius I Remand



The road ahead...



1. Explore the danger always present in the good faith exception and the “deterrence” rationale.
2. Discuss a few key federal cases that have expanded the good faith exception and laid the groundwork for undermining the exclusionary rule.
3. Look at how the *Julius I* remand order in 2023 stitched together pieces of the bad federal cases.

A Step Back in Time: Brennan and Marshall Called It

- ▶ In *U.S. v. Calandra*, 414 U.S. 338 (1974), the US Supreme Court held that the exclusionary rule should not apply to federal grand jury proceeding. At this point, the rule had been around in federal courts for 60 years, since *Weeks v. United States*, 232 U.S. 383 (1914).
- ▶ The majority, in a now-familiar move, weighed the costs the benefits of applying the rule to grand juries, identifying only the deterrence of police misconduct as a potential benefit.
- ▶ Brennan, joined by Marshall and Douglas, vigorously dissented and predicted that the reasoning of *Calandra* would ultimately undermine the exclusionary rule and the Fourth Amendment.

“ This downgrading of the exclusionary rule to a determination whether its application in a particular type of proceeding furthers deterrence of future police misconduct reflects a startling misconception, **unless it is a purposeful rejection**, of the historical objective and purpose of the rule. ”

Calandra, 414 U.S. at 356 (Brennan, dissenting)

Brennan & Marshall reiterated this dissent 10 years later in *Leon* and wrote that the Court’s “gradual but determined strangulation” of the exclusionary rule and “victory over the Fourth Amendment” was complete.

But in North Carolina, because of *Carter*, a fuller conception of the purposes of the exclusionary rule persisted and there was no “good faith” exception.

Waypoints in Degradation of the Exclusionary Rule

- ▶ *Hudson v. Michigan*, 547 U.S. 586 (2006), Justice Scalia wrote at length about the social costs of the exclusionary rule and claimed, “Suppression of evidence, however, has always been our last resort, not our first impulse.”
- ▶ In *Herring v. U.S.*, 555 U.S. 135 (2009), Roberts similarly wrote that “suppression is not an automatic consequence of a Fourth Amendment violation” and “the question turns on the culpability of the police and the potential of exclusion to deter wrongful police conduct.”
- ▶ In *Collins v. Virginia*, 584 U.S. 586 (2018), which upheld exclusion in an automobile curtilage case, Thomas wrote separately to argue that the “assumption that state courts must apply the federal exclusionary rule is legally dubious.”
- ▶ NOTE: None of these are good faith cases.

Good Faith Expands and Expands

- ▶ The original theory in *Leon* focused on police reliance on a facially valid warrant.
- ▶ *Krull* and *Evans* expanded this further, to police reliance on other kinds of written authority - a statute and a clerk's record.
- ▶ In 2011, the Court opened a new and broader front in *Davis v. United States*, 463 U.S. 229 (2011) - reliance on a “clear” and binding appellate court opinion.
 - ▶ *Davis* about search incident to arrest prior to *Gant*.
 - ▶ Sotomayor, concurring, attempted to cabin the new rule.

And when anti-exclusionary rule forces needed a hero....



State v. Julius, 385 N.C. 331 (2023)

- ▶ A win on the central Fourth Amendment issue - police needed a warrant to search the vehicle crashed in a ditch.
- ▶ But then the remand order gets weird:
 - ▶ Quotes from Supreme Court cases, including *Hudson* and *Herring*, characterizing exclusion as a “last resort” and balancing test;
 - ▶ Ominously, a quotation from the dissent in *Carter*;
 - ▶ Sent back to the trial court to consider exceptions to the exclusionary rule;
 - ▶ No direct mention of good faith (or any exception) but citation to *Davis*.
- ▶ The NC Supreme Court cannot change the law on the Fourth Amendment, but the vibe of the remand order suggests the trial court could decide not to exclude if not worth it on balance.



Part III

N.C. Supreme Court Resurrecting Good Faith in *Rogers*



State v. Rogers, 388 N.C. 453 (2025)

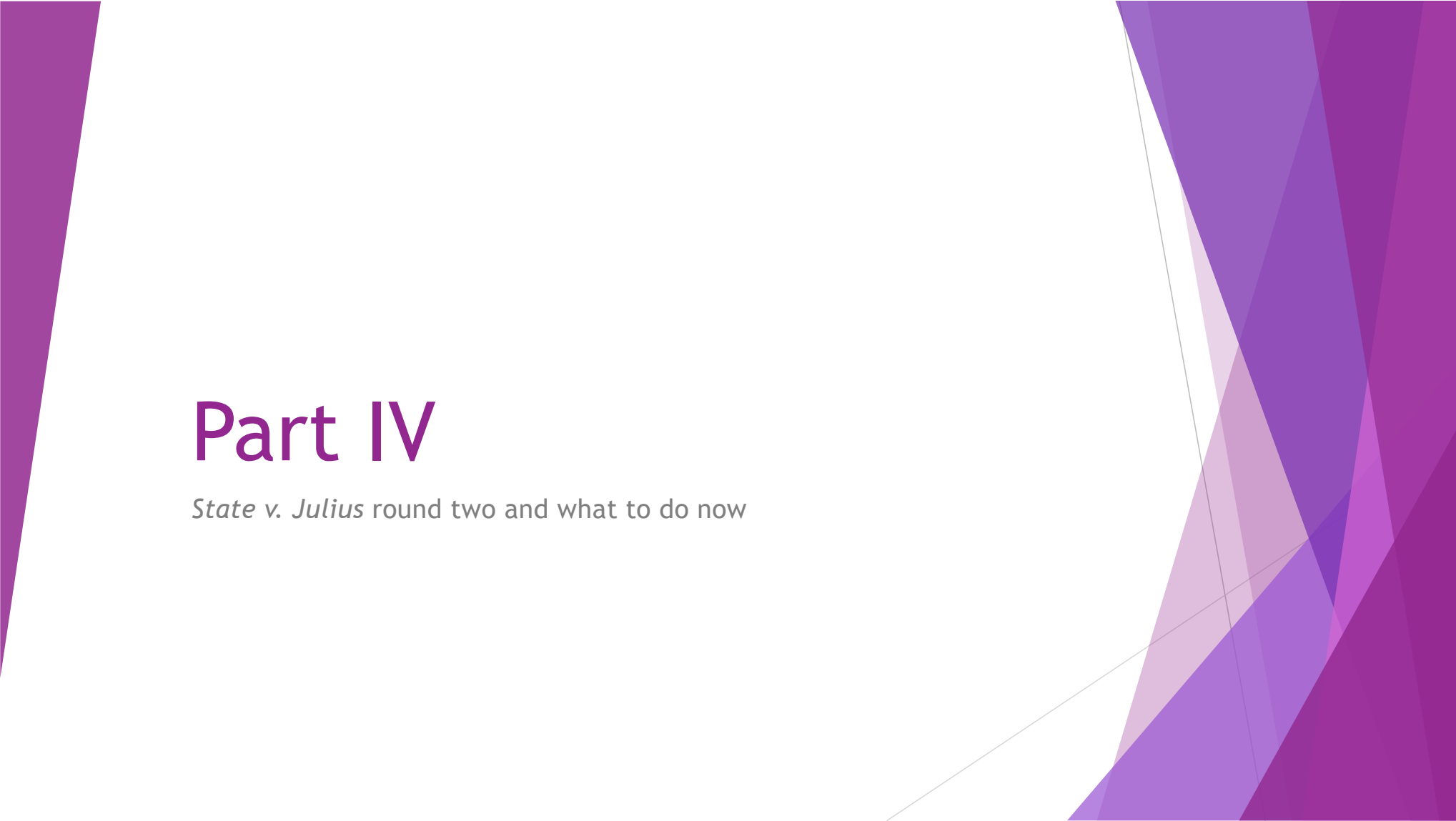
- ▶ A detective obtained Mr. Rogers' cell site location information pursuant to a court order. The winning argument at the COA was that the order was not supported by probable cause.
- ▶ Statutory Exclusionary Rule
 - ▶ N.C.G.S. § 15A-974
 - ▶ Lists 2 conditions where the evidence must be excluded

Statutory Exclusionary Rule § 15A-974

- ▶ (a) Upon timely motion, evidence must be suppressed if:
 - ▶ (1) Its exclusion is required by the Constitution of the United States or the Constitution of the State of North Carolina; or
 - ▶ (2) It is obtained as a result of a substantial violation of the provisions of this Chapter....
 - ▶ Evidence shall not be suppressed under this subdivision if the person committing the violation of the provision or provisions under this Chapter acted under the objectively reasonable, good faith belief that the actions were lawful.

State v. Rogers, 388 N.C. 453 (2025)

- ▶ Statutory good faith exception does not apply to constitutional violations.
- ▶ Determined that the evidence did not require exclusion under the 4th Amendment under the federal good faith exception.
- ▶ Expressly overruled *State v. Carter*, 322 N.C. 709 (1988).
- ▶ “[W]e assume without deciding that an exclusionary rule arises from Article I, Section 20 of our state constitution.”
- ▶ Followed rationale in *Leon* to hold that the good faith exception applies to any exclusionary rule that arises under the State constitution.
- ▶ Dissenting opinion by Justice Earls
 - ▶ Judicial integrity.
 - ▶ Undermines deterrent effect of exclusionary rule.

The slide features two large, abstract purple geometric shapes. On the left, a tall, narrow triangle points downwards. On the right, a more complex shape composed of several overlapping triangles and quadrilaterals is positioned. The text is centered on the left side of the slide.

Part IV

State v. Julius round two and what to do now

Remand in *State v. Julius* before Judge Davis in McDowell County

- ▶ Not clear to anyone exactly what the NC Supreme expects Judge Davis or the parties to do on remand
- ▶ PD's Office (Jacob Harwood) files a brief arguing no exception applies - suppress the evidence!
- ▶ State put on no new evidence but argues the good faith exception
 - ▶ State invoked the *Davis* version of good faith based on a 1993 Court of Appeals opinion it said was overruled by *Julius* in the Supreme Court - despite the fact that the NC Supreme Court didn't purport to overrule anything and there was no evidence the officers knew about the rarely-cited opinion.
- ▶ Judge Davis buys the State's argument, also finds that probable cause existed for the search, and denies the motion to suppress.
- ▶ Joanna Julius appeals again.

State v. Julius II (Court of Appeals)

COA25-277,
925 S.E.2d 854
(Feb. 4, 2026)

- ▶ Panel of Judge Dillon, Judge Stroud, and Judge Tyson
- ▶ They disagree about EVERYTHING and issue three separate opinions
- ▶ The only clear holding is that Joanna Julius loses
- ▶ PDR & NOA-CQ Pending



Lead Opinion by Dillon: Affirms Judge Davis and the State



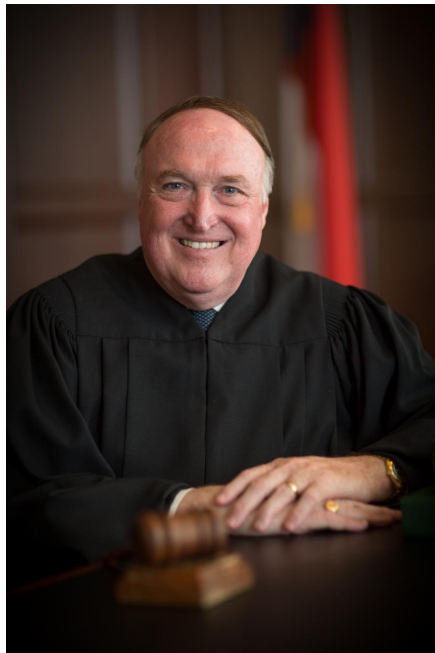
- ▶ Dillon is the only judge who agrees with the State's argument that the officers had good faith based on the 1993 case under *Davis v. U.S.*
- ▶ He also finds probable cause for the search as part of his analysis
- ▶ Recognizing disagreement, footnote says his opinion's **"binding effect shall not extend beyond the holding and any part of the concurring opinion in agreement with the lead opinion."**

Concurrence in Result Only by Judge Stroud: Case-by-Case Balancing Test

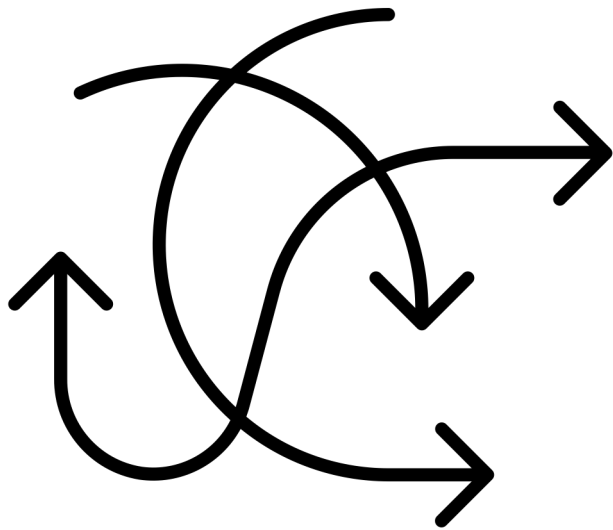


- ▶ Rejects lead opinion's holding under *Davis v. U.S.*, because this is an ambiguity in the law and *Julius* did not overrule anything
- ▶ Also rejects the lead opinion's probable cause analysis, writing that probable cause is **irrelevant** to the good faith analysis
- ▶ Finds good faith because the officer had
 - ▶ "a legitimate investigative need,"
 - ▶ "an objectively reasonable belief that his search was lawful," and
 - ▶ lacked "the culpability warranting exclusion."

Dissent by Tyson: Y'all Are Destroying the Fourth Amendment



- ▶ Agrees with Dillon that a finding of probable cause is essential before officers can use the good faith exception (**majority view!**)
- ▶ Agrees with Stroud that *Julius* didn't overrule anything and *Davis v. U.S.* good faith cannot apply here (**majority view!**)
- ▶ Writes at length about the Fourth Amendment, the *Rogers* decision, and how Stroud's opinion in particular "obliterated the Fourth Amendment altogether"
- ▶ Focuses on fact State produced no evidence at remand hearing; would reverse and require suppression of the evidence



So, what is, like,
“the law?”

And what do we
do now?

Keep Fighting!

The Exclusionary Rule

1. Ignore the vibes and argue the law:
 - ▶ We have an exclusionary rule under the 4th Amendment until the US Supreme Court says otherwise
 - ▶ NOT a case-by-case balancing test
 - ▶ Continue to invoke the NC Constitution in parallel
2. Tell the truth: The exclusionary rule is not just about deterrence
3. Preserve your objections at trial and give notice of appeal

The Good Faith Exception

1. Argue Tyson's dissent (preferably citing its sources rather than the dissent itself)
2. If the State relies on Dillon or Stroud's opinion, point to Dillon's footnote and pending PDR
3. Back to Basics:
 1. The State has the burden to produce evidence of good faith
 2. Does the alleged good faith supply probable cause?
4. On the NC Constitution, question whether we have adopted any more than *Leon* itself

Go Forth and Be a Hero for The Fourth!

Questions?

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