



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. DON JACOB HAVATONE  
CR-15-0387-PR**

**PARTIES:**

*Petitioner:* Don Jacob Havatone  
*Respondent:* State of Arizona

**FACTS:**

In September 2012, Don Jacob Havatone drove an SUV nearly head-on into the path of a vehicle westbound on Route 66 near Kingman. The driver of the other vehicle recognized Havatone as an acquaintance when he saw him exit the driver's side of the SUV and lay down behind it. A DPS officer arrived on the scene and contacted Havatone, who was being attended by medics. Havatone admitted to the officer that he had been driving, but became unconscious and did not respond when the officer asked what happened. The officer smelled a heavy odor of alcohol on Havatone and the four passengers of the SUV. He observed numerous beer cans and an open bottle of liquor in the vehicle.

As Havatone was air-evacuated to a hospital in Las Vegas for treatment, the investigating DPS Officer asked his dispatcher to contact Nevada law enforcement and ask them to obtain a sample of Havatone's blood. Nevada authorities obtained a sample from medical personnel at the hospital. Analysis of the blood sample indicated Havatone's BAC was 0.212%.

Havatone was charged with a number of crimes, including Driving Under the Influence. A driver violates Arizona's DUI laws if he or she drives, or is in actual physical control of, a motor vehicle with a blood/breath alcohol content of .08% or higher. A.R.S. § 28-1381 *et seq.*

Havatone moved to suppress his blood test results, arguing that the blood sample was collected from him without a search warrant in violation of his Fourth Amendment rights.

The trial court denied the motion. It first decided that the evidence was admissible under both Arizona and Nevada law (so it did not decide which state's law applied). Then, it concluded that (1) the two states' law enforcement officers collectively had probable cause to believe Havatone was driving under the influence, (2) the Arizona implied consent law applied because Havatone was unconscious when his blood was drawn (making no search warrant necessary), and (3) the blood draw was objectively reasonable. The court alternatively ruled that, in the event the implied consent law were held to be unconstitutional, the good faith exception to the exclusionary rule applied.

A jury convicted Havatone of two counts of felony DUI on a suspended license, one count of aggravated assault, one count of endangerment, and four counts of misdemeanor assault.

Havatone appealed. On appeal, he argued that the trial court abused its discretion when it denied his motion to suppress the results of his blood test, among other issues not present here.

The court of appeals affirmed. It held that the warrantless seizure of Havatone's blood was valid under the "unconscious clause" included in Arizona's Implied Consent statute, A.R.S. § 28-1321(C). In the alternative, the court of appeals concluded without deciding that, if the "unconscious clause" is unconstitutional, the "good faith exception" to the exclusionary rule applies in this case. It reasoned that, where law officers acted in conformity with a statute that had

not been declared unconstitutional at the time they benefitted from the warrantless blood draw, excluding otherwise reliable evidence would have little or no effect on deterring future unlawful conduct by law enforcement officers.

### ISSUES:

By order filed on August 30, 2016, the Arizona Supreme Court granted the petition for review and directed the parties to address these two issues in simultaneous supplemental briefs:

- (1) If there was probable cause to believe Havatone was driving while under the influence, did the blood draw, pursuant to A.R.S. section 1321(C), violate the Fourth Amendment?
- (2) If so, did the good faith exception to the exclusionary rule apply?

### DEFINITIONS:

**A.R.S. § 28-1321** (Implied Consent) provides in relevant part:

**A.** A person who operates a motor vehicle in this state gives consent . . . to a test or tests of the person's blood, breath, urine or other bodily substance for the purpose of determining alcohol concentration or drug content if the person is arrested for any [DUI] offense . . . while the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs. The test or tests chosen by the law enforcement agency shall be administered at the direction of a law enforcement officer having reasonable grounds to believe that the person was driving or in actual physical control of a motor vehicle in this state . . . :

1. While under the influence of intoxicating liquor or drugs.

...

**C.** A person who is dead, unconscious or otherwise in a condition rendering the person incapable of refusal is deemed not to have withdrawn the consent provided by subsection A of this section and the test or tests may be administered, subject to [Arizona's DUI laws].

**Exclusionary rule:** The “exclusionary rule” is a deterrent sanction courts have created that bars the prosecution from introducing evidence obtained by way of a Fourth Amendment violation. *Davis v. United States*, 564 U.S. 229, 231 (2011).

**Good-faith exception:** The “good-faith exception” is a judicially-created exception to the judicially-created exclusionary rule. When a court finds a statute unconstitutional on grounds that it violates the Fourth Amendment’s prohibition against unreasonable searches and seizures, the good-faith exception may prevent the exclusionary rule from applying to cases that are pending when the statute is overturned. A court may find the exclusion of otherwise reliable evidence inappropriate, if the purpose of the exclusionary rule is not advanced by applying it. *See Davis*, 564 U.S. at 244-249. *See also State v. Mitchell*, 234 Ariz. 410 (App. 2014).

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