Fourth Amendment violations."[474] The Court also suggested some circumstances in which courts would be unable to find that officers' reliance on a warrant was objectively reasonable: if the officers have been "dishonest or reckless in preparing their affidavit," if it should have been obvious that the magistrate had "wholly abandoned" his neutral role, or if the warrant was obviously deficient on its face (*e.g.*, lacking in particularity).

The Court applied the *Leon* standard in *Massachusetts v. Sheppard*,[475] holding that an officer possessed an objectively reasonable belief that he had a valid warrant after he had pointed out to the magistrate that he had not used the standard form, and the magistrate had indicated that the necessary changes had been incorporated in the issued warrant. Then, the Court then extended *Leon* to hold that the exclusionary rule is inapplicable to evidence obtained by an officer acting in objectively reasonable reliance on a statute later held to violate the Fourth Amendment.[476] Justice Blackmun's opinion for the Court reasoned that application of the exclusionary rule in such circumstances would have no more deterrent effect on officers than it would when officers reasonably rely on an invalid warrant, and no more deterrent effect on legislators who enact invalid statutes than on magistrates who issue invalid warrants.[477] Finally, the Court has held that the exclusionary rule does not apply if the police conduct a search in objectively reasonable reliance on binding judicial precedent, even a defendant successfully challenges that precedent.[478]

The Court also applied *Leon* to allow the admission of evidence obtained incident to an arrest that was based on a mistaken belief that there was probable cause to arrest, where the mistaken belief

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[474] 468 U.S. at 919, 921.

[475] 468 U.S. 981 (1984).

[476] Illinois v. Krull, 480 U.S. 340 (1987). The same difficult-to-establish qualifications apply: there can be no objectively reasonable reliance "if, in passing the statute, the legislature wholly abandoned its responsibility to enact constitutional laws," or if "a reasonable officer should have known that the statute was unconstitutional." Id. at 355.

[477] Dissenting Justice O'Connor disagreed with this second conclusion, suggesting that the grace period "during which the police may freely perform unreasonable searches . . . creates a positive incentive [for legislatures] to promulgate unconstitutional laws," and that the Court's ruling "destroys all incentive on the part of individual criminal defendants to litigate the violation of their Fourth Amendment rights" and thereby obtain a ruling on the validity of the statute. 480 U.S. at 366, 369.

[478] Davis v. United States, 564 U.S. ___, No. 09–11328, slip op. (2011). Justice Breyer, in dissent, points out that under Griffith v. Kentucky, 479 U.S. 314 (1987), "a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final . . . ." Thus, the majority opinion in Davis would allow the incongruous result that a defendant could prove his Fourth Amendment rights had been violated, but could still be left without a viable remedy. Id. at 2 (Breyer, J., dissenting).