

FILED
AUG 24, 2012
Court of Appeals
Division III
State of Washington

NO. 284077-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

KIM ANN SCHARNHORST, Appellant

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 09-1-00179-4

SUPPLEMENTAL BRIEF OF RESPONDENT
APPLICABILITY OF *STATE V. SNAPP*

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ISSUES

1. Does the defendant, who was a non-owner passenger in a vehicle in which the driver was arrested, have standing to challenge the search of that vehicle?
2. If Defendant has standing, what is the effect of *State v. Snapp*?

ARGUMENT

1. The defendant has automatic standing to challenge the search of the passenger compartment.

State v. Jones, 146 Wn.2d 328, 45 P.3d 1062 (2002) is on point. In that case the driver was stopped for a traffic infraction. He had an outstanding warrant and was arrested. The police were planning on searching the passenger compartment pursuant to Mr. Jones' arrest (this was pre-*Gant*¹). The police directed the female passenger to exit the vehicle and further directed her to return her purse to the inside of the vehicle. The police found a gun in the

¹ *Arizona v. Gant*, 566 U.S. 332, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009).

purse. The defendant admitted that the gun was his.

The Court reversed Mr. Jones' conviction for Unlawful Possession of a Firearm. The Court held that Mr. Jones had automatic standing to challenge the search of the passenger's purse. To assert automatic standing the defendant 1) must be charged with an offense that involves possession as an essential element and 2) must be in possession of the subject matter at the time of the search or seizure. There was a direct relationship between the challenged police action and the evidence used against Jones.

The *Jones* Court distinguished *State v. Williams*, 142 Wn.2d 17, 11 P.3d 714 (2000). In *Williams* the defendant was arrested during the entry of a third person's residence to serve an arrest warrant. Drugs were found on Williams' person. In *Williams*, the Court found that the challenged search was the entry onto a third person's residence. Thus, the defendant did not

have to choose between admitting he owned the residence or possessed the drugs. The second element of automatic standing (possession of the subject matter) did not apply. The drugs were on the defendant's person; the fact that the police may have illegally entered a third person's residence was not sufficiently related to the drugs on the defendant. Therefore, the automatic standing doctrine was not applicable in *Williams*.

The *Jones* case seems very similar to the case herein. The defendant is challenging the search of the passenger compartment of a vehicle. That search led the police to her purse and the discovery of contraband in her purse.

2. The effect of *State v. Snapp*, 174 Wn.2d 177 (2012) is to eliminate a permissible reason for the search of the passenger compartment.

When the search occurred, pursuant to *Arizona v. Gant*, 556 U.S. 332, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009), the police were authorized to search the passenger compartment of a vehicle for evidence of the crime for which the

driver was arrested. The driver in this case was arrested for Obstructing a Public Servant. Therefore, it was reasonable for the police to search the passenger compartment of the vehicle for evidence of the driver's correct identification.

Snapp eliminated this exception to the general rule under *Gant*, requiring a warrant to search a vehicle after an occupant is arrested.

CONCLUSION

Unfortunately, although the trial court was correct when the case herein was heard, the State must concede that under the current law, the search was not justified.

RESPECTFULLY SUBMITTED this 24th day of August 2012.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

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