

NO. 284077-III

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

FILED

MAY 05 2010

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

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THE STATE OF WASHINGTON, Respondent

v.

KIM ANN SCHARNHORST, Appellant

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APPEAL FROM THE SUPERIOR COURT  
FOR BENTON COUNTY

NO. 09-1-00179-4

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BRIEF OF RESPONDENT

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ANDY MILLER  
Prosecuting Attorney  
for Benton County

ADRIENNE M. FARABEE, Deputy  
Prosecuting Attorney  
BAR NO. 32859  
OFFICE ID 91004

7122 West Okanogan Place  
Bldg. A  
Kennewick WA 99336  
(509) 735-3591

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### STATEMENT OF THE CASE

On February 20, 2009 the defendant was a passenger in a vehicle Trooper Luedtke had stopped for a traffic violation. (RP 5<sup>1</sup>). The driver (Castellano) was eventually arrested for obstructing, and methamphetamine was found on her person. (CP 8; RP 5).

After placing the driver under arrest, Trooper Luedtke made contact with the defendant and asked her to exit the vehicle so that he could search it incident to arrest. (RP 5). Upon exiting the vehicle, Trooper Luedtke asked the defendant if anything in the vehicle belonged to her. (RP 6). The defendant indicated and pointed to a purse that was on the seat. (RP 6). Trooper Luedtke stated that the purpose of removing the defendant's purse was that he did not want to search any of her property because she wasn't the person under arrest. (RP 7). Trooper Luedtke testified that it would have created a safety

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<sup>1</sup> All citations are to the 3.6 Hearing held on 06/10/09, unless otherwise stated.

risk if the defendant had been allowed to retrieve her own purse from the vehicle. (RP 15). He stated that by retrieving the purse for her, if he felt something that was possibly the weight of a firearm or something like that, he could have kept the purse insulated from her person. (RP 15). When Trooper Luedtke retrieved the purse, he observed a set of brass knuckles and what appeared to be a marijuana cigarette inside the purse. (RP 7).

The defendant was then placed under arrest for possession of a dangerous weapon. (RP 7). She was searched incident to arrest and a baggie of suspected methamphetamine was found on her person. (RP 8).

The defendant moved to suppress the evidence pursuant to Gant. (RP 30). The court held that with the crime of Unlawful Possession of a Controlled Substance, it is reasonable to believe that evidence of that crime might be found in the vehicle from which the person was just removed.

(CP 9; RP 37). The court also held that there was probable cause to search the vehicle for evidence of the crime of obstruction since there was evidence that the driver had given a false name, and it was reasonable to believe that identification or paperwork that might lead to the actual identity of that person would be contained in that vehicle, items of dominion that would likely be in the automobile. (CP 9; RP 36-37).

#### ARGUMENT

The search of the driver's vehicle was a lawful search incident to arrest. In Arizona v. Gant, 129 S. Ct. 1710, 1719-1720, 173 L.Ed. 2d 485 (2009), the Court held that a vehicle search incident to arrest is lawful when it is "reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." In Gant, Arizona police officers arrested Gant for driving on a suspended license. Gant, 129 S. Ct. at 1715. After handcuffing Gant and placing

him in the back of a patrol car, officers searched his vehicle and found cocaine in the pocket of a jacket in the back seat. On appeal, the United States Supreme Court reversed, holding that police officers may search a vehicle incident to arrest only if the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search or if it is reasonable to believe that the vehicle might contain evidence of the offense of arrest. Gant, 129 S.Ct. at 1719.

In State v. Snapp, 153 Wn. App. 485, 219 P.3d 971 (2009), the defendant was arrested for escape, driving while license suspended, and drug paraphernalia. The defendant was placed into the patrol car and the Trooper then searched the vehicle for evidence related to the crime. At the CrR 3.6 Hearing, the Trooper testified that he searched the car for drugs. The court held that the search fell under the exception laid out in Gant because the Trooper searched the vehicle

for evidence related to the crime for which the defendant was arrested.

It is the same situation in this case. The driver of the vehicle was arrested for possession of methamphetamine and obstructing. It is reasonable to believe that there may be evidence of that crime contained in the vehicle from which the driver was just removed. It is also reasonable to believe that there would be documentation, dominion indicating the true name of the driver who was just removed, which is of evidentiary value to the charge of obstructing.

Counsel cites State v. Patton, 167 Wn.2d 379, 219 P.3d 651 (2009) for the proposition that the holding is more restrictive than Gant because it requires proof that the evidence believed to be contained in the vehicle is presently at risk of being concealed or destroyed. However, the Patton Court did not address a search incident to arrest, and stated that the circumstances in Patton simply did not involve a search incident

to arrest. Patton, 167 Wn.2d at 395. The Court does not even address the Fourth Amendment. The search in this case was clearly within the holding of Gant.

**CONCLUSION**

The search of the car incident to arrest was lawful. For the foregoing reasons, the State respectfully requests this Court to affirm defendant's conviction of Unlawful Possession of a Controlled Substance.

**RESPECTFULLY SUBMITTED** this 4th day of May  
2010.

**ANDY MILLER**

Prosecutor



**ADRIENNE M. FARABEE**, Deputy

Prosecuting Attorney

Bar No. 32859

OFC ID NO. 91004

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

NO. 284077

vs.

DECLARATION OF SERVICE

KIM ANN SCHARNHORST,

Appellant.

I, PAMELA BRADSHAW, declare as follows:

That I am over the age of eighteen (18) years, not a party to this action, and competent to be a witness herein. That I, as a Legal Assistant in the office of the Benton County Prosecuting Attorney, served in the manner indicated below, a true and correct copy of the *Brief of Respondent* and this *Declaration of Service*, on May 4, 2010.

David N. Gasch  
Gasch Law Office  
P.O. Box 30339  
Spokane, WA 99223-3005

- U.S. Regular Mail, Postage Prepaid
- Legal Messenger
- Facsimile

KIM ANN SCHARNHORST  
910 W. ENTIAT  
KENNEWICK, WA 99336

- U.S. Regular Mail, Postage Prepaid
- Legal Messenger
- Facsimile

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Kennewick, Washington, on May 4, 2010.

  
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 PAMELA BRADSHAW