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**Court of Appeals No. 37210-0-II**

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COURT OF APPEALS  
DIVISION II

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**COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO**

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**STATE OF WASHINGTON,**

**Plaintiff/Respondent,**

**v.**

**DANIEL GERALD SNAPP,**

**Defendant/Appellant.**

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**SUPPLEMENTAL BRIEF OF APPELLANT**

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**Appeal from the Superior Court of Pierce County,  
Cause No. 06-1-05153-1  
The Honorable Katherine M. Stolz, Presiding Judge**

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**A. SUPPLEMENTAL ISSUE PRESENTED**

Does *Arizona v Gant* apply to Mr. Snapp's case? If so, is reversal required?

**B. STATEMENT OF THE CASE**

At oral argument appellant raised the issue of the applicability of *Arizona v Gant*, 566 U.S. \_\_\_, 129 S.Ct 1710, 173 L.Ed 2d. 485 (2009) to Mr. Snapp's case. Appellant filed a Statement of Additional Authorities which included a citation to *Arizona v Gant* on the same date. On June 25, 2009 this Court entered an Order Requesting Additional Briefing concerning: 1) The merits of the CrR 3.6 hearing, if not previously addressed, and 2) The application, if any of *Arizona v Gant* [to this case]. Appellant previously addressed the CrR 3.6 hearing in the Opening Brief, as well as the Reply Brief of Appellant. Appellant, therefore, submits the following in regard to the application of *Arizona v Gant* to Mr. Snapp's case. The Statement of the Case as set forth in Appellant's Opening and Reply. Briefs are incorporated by reference herein.

C. ARGUMENT

**ARIZONA V GANT APPLIES TO MR. SNAPP'S CASE  
AND BOTH THE FEDERAL AND WASHINGTON  
STATE'S EXCLUSIONARY RULES REQUIRE  
SUPPRESSION OF ALL EVIDENCE FOUND  
DURING THE SEARCH OF MR. SNAPP'S  
VEHICLE INCIDENT TO HIS ARREST.**

“The law in Washington is that a new rule for the conduct of criminal prosecutions applies retroactively to all cases, state or federal, pending on direct review or not yet final.” *State v. Kilgore*, 141 Wn.App. 817, 832, 172 P.3d 373 (2007). Thus, because Mr. Snapp’s case was pending on direct review, *Arizona v. Gant* applies.

The trial court found that the trooper searched Mr. Snapp’s vehicle incident to his arrest on a warrant as well as for the charges of drug paraphernalia and DWLS. CP 73-76. Mr. Snapp had been arrested, handcuffed, and placed in the patrol car prior to the search. Furthermore, the trooper testified that he was not concerned about officer safety or destruction of the evidence when he searched inside the car and located the accordion file and the zippered wallet that contained evidence pertaining to the identity theft charges of which Mr. Snapp was convicted.

In *Arizona v. Gant*, the US Supreme Court held,

Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies. *Gant*, 556 U.S. \_\_\_\_\_, \*11.

With regards to the lawfulness of the search of the vehicle incident to Mr. Snapp's arrest, the facts of Mr. Snapp's case are remarkably similar to those of *Gant*. In *Gant*, the defendant was arrested for driving on a suspended license, handcuffed, and locked in a patrol car before officers searched his car and found cocaine in a jacket pocket. The Arizona trial court denied his motion to suppress the evidence, and he was convicted of drug offenses. Reversing, the Arizona Supreme Court distinguished *New York v. Belton*, 453 U.S. 454, 101 S. Ct. 2860, 69 L.Ed. 2d 768 (1981) on the ground that it concerned the scope of a search incident to arrest but did not answer the question whether officers may conduct such a search once the scene has been secured. The State petitioned the US Supreme Court to review the case and the Supreme Court granted certiorari.

The US Supreme Court agreed with the Arizona Supreme Court's holding that,

Because Gant could not have accessed his car to retrieve weapons or evidence at the time of the search...the search-incident-to-arrest exception to the Fourth Amendment's warrant requirement, as defined in *Chimel v. California*, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969), and applied to vehicle searches in *New York v. Belton*, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981), did not justify the search in this case.

*Gant*, 129 S.Ct, at 1714.

Although it overruled *Belton*, the *Gant* court did "conclude that circumstances unique to the vehicle context justify a search incident to a lawful arrest when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." *Gant*, 129 S.Ct, at 1719. But, in promulgating this rule, the *Gant* Court also held that "In many cases, as when a recent occupant is arrested for a traffic violation, there will be no reasonable basis to believe the vehicle contains relevant evidence." *Gant*, 129 S.Ct, at 1719.

When a defendant challenges the search of a vehicle under *Gant*, the only facts that defendant must establish are that the vehicle was searched incident to the arrest of an occupant and that the officer who searched the vehicle had no reason to believe that evidence of the

crime of arrest would be found in the vehicle. Here, Mr Snapp's vehicle was searched incident to his arrest for a warrant for the crime of escape, and for possession of drug paraphernalia and DWLS, not for the crimes of identity theft. Thus, the search of his vehicle is unconstitutional under the Fourth Amendment pursuant to *Gant*. No further facts are necessary for this court to rule on the lawfulness of the search of Mr. Snapp's vehicle.

While the Federal exclusionary rule under the Fourth Amendment establishes the "minimum" exclusionary rule (*see State v White*, 97 Wn.2d, 92, 109, 640 P.2d 1061), Washington's article 1, § 7 exclusionary rule is more stringent than the Federal rule and is more protective of the privacy rights of Washington citizens. Therefore, if evidence derived from an unlawful search must be suppressed under the Fourth Amendment, then it must also be suppressed under article 1, § 7. Further, allowing the State to use the fruits of a known unconstitutional search would impugn the integrity of the judiciary since this would be a de facto sanctioning by the court of unlawful behavior by the State.

**D. CONCLUSION**

Under *Arizona v Gant*, and for all of the foregoing reasons and conclusions Mr. Snapp respectfully requests that this Court reverse the trial court's denial of his motion to suppress evidence and dismiss his convictions for second degree identity theft.

Respectfully Submitted this 27<sup>th</sup> day of July, 2009



Sheri L. Arnold  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that on July 27, 2009, she delivered in person to: the Pierce County Prosecutor's Office, County-City Building, 930 Tacoma Avenue South, Tacoma, Washington 98402, and by U.S. mail to Daniel Gerald Snapp, DOC #801683, Washington Corrections Center, Post Office Box 900, Shelton, Washington 98584, true and correct copies of this Supplemental Brief. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington on July 27, 2009.

  
Norma Kinter

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