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NO. 87104-3

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

LARRY D. TYLER,

Petitioner.

SUPPLEMENTAL BRIEF OF PETITIONER

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ORIGINAL

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I. STATEMENT OF ISSUES

1. Whether the trial court erred when it denied the defendant's CrR 3.6

Motion to suppress the evidence, where neither the driver-arrestee-Mr. Tyler nor the owner, consented to an inventory search?

2. Whether the trial court erred when it denied the defendant's motion to

reconsider its decision denying the motion to suppress drug evidence discovered during an inventory search of the vehicle the defendant was driving?

3. Whether the trial court erred when it denied the defendants motion to

reopen the case based on the discovery of an April 23, 2009 email authored by the same arresting officer of November 12, 2009?

The email advocated implementing police procedures within the Jefferson County Police Department to "circumvent" the United States Supreme Court decision of April 21, 2009 in *Arizona v. Gant*, 556 U.S. 332, 129 S.Ct. 1710, 173 L. Ed.2d 485 (2009).

4. Whether there was sufficient evidence to support the trial court's determination of contested facts stated in its Memorandum Opinion and Order on Motion to Suppress Evidence?

II. STATEMENT OF THE CASE

Statement of Procedure

Larry Dean Tyler was charged in count I with Unlawful Possession of a Controlled Substance-methamphetamine contrary to RCW 69.50.4013(1). CP 2. Count II alleged Use of Drug Paraphernalia in violation of RCW 69.50.412(1). CP 2. Count III charged Driving While License Suspended or Revoked in the Third Degree pursuant to RCW 46.20.342(1)(c). CP 2. All counts occurred on November 12, 2009. *id.*

The defendant filed a CrR 3.6 motion to suppress the evidence. CP 6. The trial court filed a Memorandum Opinion and Order on Motion to Suppress Evidence and denied the motion to suppress. CP 26.

The defendant then filed a motion to reconsider on January 29, 2010. CP 31. This was followed by defendant's motion to reopen the CrR 3.6 hearing that was filed on February 3, 2010. CP 33.

The motion to re-open was based on an e-mail authored by the arresting officer on April 23, 2009. The e-mail concerned issues involved in the CrR 3.6 hearing, namely the United Supreme Court case of *Arizona v. Gant, supra*. The email stated in part:

“This unfortunate ruling [*Arizona v. Gant*] hinders our ability to continue the efforts that have been enforce (sic) for some time. The obvious way to circumvent this is impounding the vehicle and performing an inventory search. The problem with this is that we must afford the person the chance to contact someone else and

determine if it is safely off of the roadway or not. It also obviously limits what we can search as well. The other way around this case and that is the use of a K-9.” CP 36. (See appendix.)

Both of these motions were denied by a written Memorandum Opinion on February 19, 2010. CP 40. Thereafter, Mr. Tyler was found guilty based on stipulated facts of Count I and Count III at a stipulated bench trial conducted on April 19, 2010. RP 59-60. He was found not guilty of Count II. RP 60.

CrR 3.6 Hearing

Deputy Brett Anglin testified that he was a deputy sheriff for Jefferson County in traffic enforcement. RP 9. He was on duty on November 11 (sic), 2009. id. While patrolling on Highway 104 he noticed a vehicle eastbound going 65 mph in a 60 mph zone. RP 10. A computer check revealed that the registered owner of the vehicle-a female- was suspended in the third degree. id. The vehicle was stopped for speeding.

Upon being stopped, Larry Dean Tyler, “...stated that he did not have a driver’s license.” RP 11. The passenger was observed “trying to hide a beer can between his legs.” id. The deputy testified to the results of his check: “I received in the return that Mr. Tyler was suspended in the third degree, and I also received a return that the passenger was also suspended and had several outstanding warrants.” RP 12.

Tyler was arrested for DWLS 3rd degree, searched and placed in the patrol car. id. Another deputy arrived and a “trooper” dealt with the passenger. RP 13. Deputy Anglin asked Mr. Tyler for consent to search his motor vehicle. Tyler refused. id. The passenger was released because of confusion about whether his warrants were extraditable or not. The deputy then called for an impound tow.¹ id

Deputy Anglin testified that he had the vehicle impounded because “It was less than a foot on a roadway that was a 60 mile an hour road next to a congested area, which was the Hood Canal Bridge...And also due to the fact that there was no driver on scene that could remove the vehicle within a timely manner.” RP 14. The passenger had possession of Mr. Tyler’s cell phone but was unable to locate anyone to drive the vehicle away. RP 14-15.

The deputy testified that he was impounding the vehicle “solely for the purpose of traffic safety.” RP 15. He did not impound the vehicle for the purposes of searching for an object he had seen when the passenger was attempting to hide something. RP 11. The deputy was able to identify that object as an “energy drink/alcohol” when he first approached the

¹ When asked why he called for an impound tow, the deputy responded: “To remove the vehicle from the roadway. It was the busiest part of our road and it was less than a food (sic) away from the fog line.” RP 13.

vehicle. RP 15.

The deputies then inventoried the vehicle while they waited for the tow truck. RP 16. While conducting the “impounded inventory” Deputy Anglin discovered a blue metal container directly underneath the driver’s seat that contained “...a brown wad of cotton along with what appeared to be possibly heroin. Also, behind the seat were two amplifiers where the deputy “...could clearly see a piece of plastic, a Zip-loc container that had white powder in it that is consistent with methamphetamine.” id.

On re-cross examination the deputy Anglin testified that before *Gant* an inventory search was called “search incident to arrest.” RP 23. He further testified that he did not know whether there was a state law about inventory searching. And he did not know whether Jefferson County Sheriff’s Office had a policy on inventory searching or if it did he did not know what it stated.² RP 24.

Examination of the officer continued about the inventory search procedure. The deputy testified that he initiated the option of the passenger-at the driver’s direction- calling someone to pick up the vehicle.

² On re-redirect examination Deputy Anglin clarified: “There’s likely a policy, yes. But would I know what it says or how it relates to an inventory search I honestly could not testify, I’d have to go get the policy and read it.” RP 24.

RP 27. If someone was contacted- such as the owner- they were given a “...a reasonable amount of time, which is usually less than 30 minutes, the amount of time it would take a tow to get there, as well.” RP 28. The third option, besides having the vehicle towed, was to lock it and have the vehicle retrieved at a later time if roadway safety conditions allow. *id.*

Larry Tyler testified that after he exited his vehicle the deputy asked him if he could search his car. He testified; “I said no.” RP 31. After telling the officer that he would not consent to a search of his motor vehicle, the officer “...went and looked in the car...” RP 32. He was then handcuffed and placed in the back of the patrol car. *id.*; CP 5.

Court of Appeals’ Holding

The divided Court of Appeals’ opinion held that consent was not required, that the seized evidence was the result of a lawful inventory search and there was substantial evidence to support the court’s rulings.

The majority of the Court of Appeals reasoned that since Tyler had conceded that Deputy Anglin’s impound of the vehicle was reasonable, therefore the only issue to be decided was whether the inventory search was conducted in good faith following a lawful impoundment.³ *Op. at 5.*

³ The vehicle was impounded pursuant to the community care taking function of the police. “When impoundment would be permitted as part of the police community caretaking function, police must first

make an inquiry as to the availability of the owner or the owner's spouse or friends to move the vehicle." Justice Robert F. Utter *Survey of Washington Search and Seizure Law: 1988 Update* 11 UPS LR 411, 576 (1988) (citing *State v. Williams*, 102 Wn.2d 733, 743 689 P.2d 1065 (1984); *State v. Houser*, 95 Wn.2d 143, 153, 622 P.2d 1218 (1980); *State v. Simpson*, 95 Wn. 2d 170,189, 622 P.2d 1199 (1980); *State v. Bales*, 15 Wn. App. 834,836-37, 522 P.2d 688 (1976); *State v. Singleton*, 9 Wn. App. 327, 333, 511 P.2d 1396 (1973)).

J. Armstrong's dissenting opinion questioned the validity of Tyler's concession that the impound was reasonable in light of Tyler's motion to re-open the suppression hearing following disclosure of Deputy Anglin's e-mail. This e-mail suggested circumvention of the landmark, United States Supreme Court decision in *Arizona v. Gant, supra*.

Essentially, the Court of Appeal's majority opinion found that under all the circumstances the search was reasonable and was not a pretext for an evidentiary search. Op. at 9-10. The court held that consent of the owner to inventory the impounded vehicle was not required. However, it based its decision on the less protective federal constitutional standard set forth in *South Dakota v. Opperman*, 428 U.S. 364, 376 n. 10, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976). Op. at 9. (Federal courts do not require the owner's permission to search.)

Secondly, the two person majority of the Court of Appeals determined that the trial court did not abuse its discretion when it denied Tyler's motion to reopen the suppression hearing. Op. at 10 (citing *State v. Sanchez*, 60 Wn. App. 687, 696, 806 P.2d 782 (1991) ("A motion to reopen a proceedings for the purpose of introducing additional evidence is addressed to the sound discretion of the trial court.") id.

The Court of Appeals discounted the import of Deputy Anglin's e-mail. The court noted: "We note that, contrary to Tyler's argument,

Deputy Anglin's e-mail is not designed to circumvent court decisions but to persuade his supervisors to send him to K-9 training." Op. at 11.

The court also discounted the clearly erroneous determination by the trial court that this impound and inventory occurred prior to the *Gant* decision rather than two days after as the record shows.⁴

III. SUMMARY OF ARGUMENT

This appeal calls into question the trend in the law concerning impound and inventory: a narrowly construed exception to the warrant requirement. The reasoning of the Court of Appeals' decision is at odds with the reasoning and protection of the law as set forth in *State v. White*, 135 Wn.2d 761, 958 P.2d 982 (1998); *State v. Houser*, 95 Wn.2d 143; *State v. Williams*, 102 Wn.2d 733; *State v. Bales*, 15 Wn. App. 834 and Const. Art. 1, sec. 7.

It is now axiomatic that Washington's constitution provides greater protection to an individual's right to privacy and protection from searches than does the Fourth Amendment. *White*, 135 Wn. 2d at 769. This protection should be extended to include the obligation of law

⁴ According to J. Armstrong: "The State concedes that the second finding is incorrect. The Supreme Court published *Gant* on April 21, 2009, more than six months before the arrest in this case. *Gant*, 556 U.S. 332. Deputy Anglin's e-mail was sent on April 23, 2009, two days after the *Gant* decision. The deputy arrested Tyler on November 12, 2009, more than six months after *Gant*." Op. at 14.

enforcement to obtain the express permission of the vehicle's owner or spouse or the driver, if the owners are not available.

The Court of Appeals decision focused on the need for an inventory search in this appeal because of the "expensive, unsecured stereo equipment". Op. at 6, 9. Tyler testified that there was no discussion about impounding his vehicle. RP 32-3. He testified that there was no discussion about whether he wanted the contents inventoried before the vehicle was impounded. RP 33.

Yet, Tyler was charged with all illegal items found in the interior of the vehicle. See *State v. Mangold*, 82 N.J.575, 577, 414 A.2d 1312 (1980) (although impoundment is lawful, inventory search of vehicle contents is unlawful when the vehicle's occupants were not first given the opportunity to safeguard their property.)

The Court of Appeal dissenting opinion observed and stated: "Moreover, the trial court's comment that Tyler "admitted that the impound ...was reasonable" is questionable. Tyler conceded that the impound was reasonable in his original motion, and, arguably, again in his motion to reconsider. But Tyler did not learn of Deputy Anglin's e-mail until after he moved for the trial court to reconsider. And Tyler did not renew his concession after that or in his briefing to us." Op. at 14-15.

IV. ARGUMENT

A. THE COURT OF APPEALS ERRED WHEN IT AFFIRMED
THE TRIAL COURT'S DENIAL OF THE MOTION TO
RE-OPEN THE CASE.

Gant 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.” 129 S.Ct. 1723. The court’s concern was the “recurring threat to privacy of countless individuals” where a person is stopped and arrested for a traffic offense and the police thereupon search the interior of the vehicle.⁵ *id.* Deputy Anglin’s concern was expressed in his reactionary e-mail three days later when he wrote: “The obvious way to circumvent this is impounding the vehicle and performing an inventory search.” CP 36.

According to *State v. Montague*, 73 Wn.2d. 381, 389-90, 438 P.2d 571 (1968) the purpose of an inventory search is “...for the dual purpose of protecting its contents from undue risk during storage and protecting the police and the bailee from false claims of loss or theft.”

Instead of granting citizens of Washington greater protection from

⁵ Impoundment for enforcement of traffic regulation is not mandatory. Utter *Survey of Washington Search and Seizure Law: 1988 Update* 11 UPS LR at 576. See also statement in *Gant* that is contrary to Deputy Anglin’s request to search: “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.”*Id.* 129 S.Ct. at 1719.

“giving officers unbridled discretion to rummage at will among a person’s belongings”- as the United States Supreme Court was concerned about- Deputy Anglin would resort to an inventory search or in his words: “The other way around this case and that is the use of a K-9.” CP 36. According to the defendant’s argument at the time of the motion to reopen: “It certainly provides proof of Deputy Anglin’s predisposition to engage in the use of pretext to search a vehicle...despite the lack of evidentiary basis for the search.”⁶ CP 33-5.

Abuse of Discretion

The Court of Appeals was not alarmed by the deputy’s e-mail and noted instead: “We note that, contrary to Tyler’s argument Deputy Anglin’s e-mail is not designed to circumvent court decisions but to persuade his superiors to send him to K-9 training.” Op. at 11. However, the trial court based its decision not to reopen the case because it erroneously found that the Deputy could not have any motivation to circumvent *Gant* because Tyler’s arrest occurred before the *Gant* decision.

This was an abuse of discretion because, as noted by the dissenting opinion: “The Supreme Court published *Gant* on April 21, 2009, more

⁶ The deputy’s e-mail also stated” “If used appropriately, [K-9] and in a Deputy’s hands that is available to use it, I believe that this ruling will have little effect...” (ellipses are the author’s) CP 36.

than six months before the arrest in this case.” Op. at 14. The dissent stated: “A trial court’s decision based on facts not supported by the record is based on untenable grounds.”(citing *State v. Rundquist*, 79 Wn. App. 786, 793, 905 P.2d 922 (1995)); See, *State v. Sanchez*, 60 Wn.App. at 696 (Abuse of discretion is discretion exercised on untenable grounds for untenable reasons.”) Thus, based on the time-line of the case, Deputy Anglin had motivation to circumvent *Gant* during this incident.

The Requirement of Good Faith

An officer’s inventory search following an impound must be conducted in “good faith” in lieu of obtaining a search warrant. *State v. Bales*, 15 Wn.App. 834, 835, 552 P.2d 688 (1976), *review denied*, 89 Wn.2d 1003 (1977); *State v. Greenaway*, 15 Wn.App. 216, 547 P.2d 1231 (1976); *Montague*, 73 Wn.2d at 385; This test is also required under the Fourth Amendment. *South Dakota v. Opperman*, 428 U.S. 364, 49 L.Ed.2d 1000, 96 S.Ct.3092 (1976); *Cady v. Dombrowski*, 413 U.S. 433, 37 L.Ed.2d 706, 93 S.Ct. 2523 (1973).

Inventory searches will be upheld on appeal if the search is not a pretext for a general exploratory search. *Montague* at 385. Here, two police officers thoroughly “inventoried” the subject vehicle and a state trooper was watching the passenger. RP 13; CP 44. However, none of the

officers attempted to contact the owner to obtain permission to search the vehicle or to determine who owned the stereo amplifiers: Tyler, his passenger, the vehicle's owner or someone else. The tension in this appeal is between constitutional courts- who protect privacy rights from unreasonable searches- and law enforcement's unbridled discretion in conducting inventory searches without the requirement of a warrant.

The Requirement of Consent

According to *United States v. Wanless*, 882 F.2d 1459, 1463 (9th Cir. 1989): “[U]nder Washington law, State troopers may not conduct a routine inventory search following a lawful impoundment of a vehicle without first asking the owner, if present, if he will consent to the search.” This is the federal interpretation of our state’s law. However, this court should grant to the citizens of this state greater protection than under the federal interpretation.

According to *State v. Houser, supra* at 154 the purposes of an inventory search are to find, list, and secure from loss during detention of property “belonging to a detained person” as well as to protect the police and storage bailees from liability. See *Smith*, 76 Wn.app. at 13 “protect the arrestee’s property”. After Tyler refused to consent to search the deputies next searched the vehicle without personally attempting to contact the owner. RP 14, CP 5.

A warrantless search is presumed unreasonable pursuant to the federal and state constitutions. *Katz v. United States*, 389 U.S. 347, 357, 19 L.Ed.2d 576, 88 S.Ct. 507 (1967); *State v. Duncan* 146 Wn.2d 166, 171-72, 43 P.3d 513 (2002). This court stated in *State v. White*:

“Further, the record does not indicate White was ever asked whether he would consent to an inventory search... White was never given the opportunity to reject the protection available, and thus, the search is also suspect under *State v. Williams*....”

135 Wn.2d at 771. According to *State v. Williams*, at 743 “...even if the impoundment had been authorized, it is doubtful that the police could have conducted a routine inventory search without asking petitioner if he wanted one done.”⁷

Where it is not possible to obtain the owner’s consent, it becomes paramount to follow standardized inventory procedures in order to conduct a search in good faith with regulation and not as a pretext to an investigatory search. Here, the State was unable to articulate any standardized inventory procedures involving a search by two police officers at the same time where the driver of the impounded vehicle stated that he would not consent to the search.

⁷ In *Williams* the driver was referred to as the petitioner. The court stated more broadly in its opinion and in its reasoning: “Clearly, a *defendant* may reject this protection, preferring to take the chance that no loss will occur.” *Williams* at 743 (emphasis mine.)

According to Justice Charles W. Johnson *Survey of Washington Search and Seizure Law: 2005 Update* 28, 683 Sea. Univ. LR 467, 683-84 (2005) “Routine inventory searches are reasonable under the Fourth Amendment when police follow standard practices and the search is not a pretext for obtaining evidence the police would not be able to obtain otherwise.”(citing *South Dakota v. Opperman*, 428 U.S. at 375 and *State v. White*, 83 Wn.App. 770, 775, 924 P.2d 55 (1996), *rev’d on other grounds*, 135 Wn.2d 761 (1998)).

Requirement of Standardized Police Procedures

Additionally, the search in this case was not conducted pursuant to the requirement of “standardized police procedures which do not give excessive discretion to the police officers.” *State v. Smith*, 76 Wn.App. 9, 14, 882 P.2d 190 (1994), *review denied*, 126 Wn.2d 1003 (1995). The court stated in *State v. Mireles*, 73 Wn.App. 605, 612, 821 P.2d 162 (Div. III), *review denied*, 124 Wn.2d 1029 (1994):

“The central inquiry in an inventory search is whether it is reasonable under all of the circumstances of the particular case. *Opperman* at 373 (citation omitted). Using this analysis, inventory searches conducted according to standardized police procedures have been upheld as reasonable where there is no showing of excessive discretion or investigatory motive. *Opperman*, at 372, *Bertine* at 375.”

(citing *Colorado v. Bertine*, 479 U.S. 367, 93 L.Ed.2d 739, 107 S.Ct. 738

(1987)). Knowledge of the Jefferson County impound procedures and policy was essential when Deputy Anglin was told by Mr. Tyler that he did not have permission to search the vehicle and the deputy then looked into the vehicle.⁸ *Opperman* pointed out that standard procedures are a factor “...to ensure that the intrusion would be limited in scope....” *id.* at 376.

Deputy Anglin testified that he had not read any state law about inventory searching. RP 24. He did not know what the Jefferson County Sheriff’s Office policy was on inventory searching and he did not know what it stated.⁹ RP 24. The deputy testified that he initiated an option of the passenger calling someone to pick up the vehicle. RP 27; Op. at 2.

However, it did not appear from the testimony that Tyler was ever given the opportunity to contact the owner or any other lawful driver

⁸ See J. Armstrong’s dissenting opinion: “Deputy Anglin’s request for permission to search signals his early interest in conducting a broad search of the vehicle.” Op. at 16.

⁹ The deputy testified: “There’s likely a policy, yes. But would I know what it says or how it relates to an inventory search I honestly could not testify, I’d have to go get the policy and read it.” RP 24. Compare Court of Appeals finding: “Deputy Anglin also inventoried the car based on the sheriff office’s impound policy and standard practice.” Op. at 2.

directly before the search. RP 33.¹⁰ Compare Deputy Anglin's e-mail "The problem with this is that we must afford the person the chance to contact someone else and determine if [the car] is safely off the roadway or not." CP 36.¹¹

In *Florida v. Wells*, 495 U.S. 1, 109 L.Ed.2d 1, 110 S.Ct. 1632 (1990) there was no record of the procedures or policies of the police with regard to opening closed containers found during inventory searches. This lack of standardized procedures resulted in the exclusion of a large amount of marijuana seized by police from a locked suitcase while conducting an inventory search of the defendant's vehicle. The United States Supreme court held that "Absent such a policy, the ...search was not sufficiently

¹⁰ Tyler's testified: "Q. Did Officer Anglin ask you whether there was someone that could come and pick up the vehicle? A. No. Q. Uh, what about this interaction over your telephone with Deputy Anglin and the passenger of the vehicle? A. Uh, the deputy came and asked me if, uh, I was willing to let the passenger use the phone for the purpose of getting a ride home....Q. Uh, did you hear the passenger talking on your telephone? A. No." RP 33.

¹¹ See dissenting opinion: "Here, Tyler testified at the suppression hearing that as soon as he exited the car, Deputy Anglin asked if he could search it. Tyler said he could not. Deputy Anglin then "went and looked in the car."...Tyler also denied that the car was within a foot of the fog line and denied that Deputy Anglin ever mentioned impounding and inventorying the car." Op. at 16; RP 32.

regulated to satisfy the Fourth Amendment.”¹² *id.* at 5.

Deputy Anglin’s testified to his understanding of inventory consent searches to allow him to “search different areas of the vehicle which would include the trunk, locked containers if he allows us to, cell phones, under the hood.” RP 13. This is the type of general exploratory search that is conducted to obtain evidence. See dissenting opinion. *Op.* at 16.

Under either the Fourth Amendment or const. Art. 1, sec. 7 the reasonableness of the search is determined by the facts and circumstances of each case. *Mireless*, at 613; *Houser* at 148. Under the facts and circumstances of this case the search was unreasonable for the reasons stated.

B. THE COURT OF APPEALS ERRED WHEN IT DECIDED THAT THE TRIAL COURT’S ERRORS WERE HARMLESS.

Where constitutional rights are at issue the standard of review of trial court findings should be an independent evaluation of the evidence.

¹² According to the Court of Appeals: “Deputy Anglin also found a small blue metal container that he opened. It contained a substance later identified as heroin, but, because the State did not charge Tyler based on his possession of this heroin, we do not address it on consider it in our analysis.” *Op.* at 2.

Anglin testified that the reason he opened the screw top container was in the event there “could have been possibly jewelry” “Or anything else that was of value.” RP 22. Compare J. Armstrong’s dissenting opinion citing *Wells*: “Notably, here Deputy Anglin did not know the Jefferson county Sheriff’s Department standard for inventory procedures and whether the police are directed to search closed containers in the vehicle.” *Op.* at 16.

State v. Mennegar, 114 Wn.2d 304, 309-10, 787 P.2d 1347 (1990). The trial court did not enter written findings of fact or conclusions of law as required by CrR 3.6(b) (see appendix). *State v. Smith*, 68 Wn. App. 201, 208, 842 P.2d 494 (1992). Instead, the trial court issued a written Memorandum Opinion. CP 21.

Clearly, the trial court's first finding that this incident occurred on February 11, 2009 was in error. CP 2; Counts I, II and III. More importantly the trial court found that Anglin conducted "...a routine inventory search of the passenger compartment, which he testified was done pursuant to standard department policies...." CP 23. However, based on Deputy's Anglin's testimony on re-direct examination he clarified that he did not know how police policies related to inventory searches. RP 24.

It was not determined what the policy was with regard to a deputy and another officer inventorying the same vehicle at the same time. It is questionable that two officers would "inventory" a vehicle from the same side. The deputy testified that the vehicle was one foot off the roadway. If that were indeed the case, then wouldn't both the other deputy¹³ and Deputy Anglin have had to have been inventorying the vehicle from the right side at the same time?

¹³ Deputy Dennis. CP 5; RP 18.

The trial court's errors resulted in prejudice to the defendant and affected the trial court's conclusions of law. *State v. Bourgeois*, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997). By mis-stating the date of the incident as February 9, 2009 when it first denied the defendant's motion to suppress the evidence caused the trial court to later error in its conclusion denying the motion to re-open. The court erroneously concluded "...this arrest, impound and inventory took place prior to the publication of the Gant decision, so the ruling in Gant could not have been the motivation for this inventory search." CP 41.

V. CONCLUSION

Two officers inventoried the vehicle. Neither showed that they attempted to contact the owner before the search. In the absence of neither the owner's nor the driver's consent to inventory the vehicle, law enforcement should not be authorized pursuant to Cons. art. 1, sec. 7 to search a vehicle without a search warrant. The search in this case was not reasonable because it was not shown to be conducted pursuant to standardized department procedures.

Dated this 4th day of July 2012.

Respectfully submitted,

James L. Reese, III

PROOF OF SERVICE

STATE OF WASHINGTON)
COUNTY OF KITSAP)

James L. Reese, III, being first duly sworn on oath, deposes and says:

That he is a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to the above-entitled action, and competent to be a witness herein.

That on the 5th day of July, 2012, he deposited in the mails of the United States of America, postage prepaid, the original and one (1) copy of Supplemental Brief of Petitioner in State of Washington v. Larry D. Tyler, No. 87104-3, for filing, to the office of Ronald R. Carpenter, Clerk, Supreme Court, Temple of Justice, P.O. Box 40929, Olympia, WA 98504-0920, mailed one (1) copy of the same to Pamela B. Loginsky, Staff Attorney, Washington Association of Prosecuting Attorneys, 206 10th Avenue S.E., Olympia, WA 98501, and mailed (1) copy of the same to Appellant at his last known address; Larry D. Tyler, 1305 East 1st Street, Apt. #8, Port Angeles, WA 98362.

Signed and Attested to before me this 5th day of July, 2012 by
James L. Reese, III.

for the State of
Washington residing at Port Orchard.

Notary Public in and

My Appointment Expires: 04/04/13

OFFICE RECEPTIONIST, CLERK

To: James Reese
Subject: RE: Tyler, Larry Dean case# 87104-3

Rec. 7-17-12

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: James Reese [<mailto:jameslreese@hotmail.com>]
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