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SUPREME COURT
STATE OF WASHINGTON
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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

FRANCISCO MILLAN,

Petitioner.

NO. 89771-9

COA# 43244-7-II

RESPONSE TO MOTION FOR
DISCRETIONARY REVIEW

I. IDENTITY OF MOVING PARTY:

Respondent, State of Washington, requests the relief designated in part II.

II. STATEMENT OF RELIEF SOUGHT:

The motion for discretionary review should be denied.

III. GROUND FOR RELIEF:

The court of appeals properly affirmed the trial court's denial of the defendant's suppression motion because police observed the gun in open view and retrieved the gun pursuant to exigent circumstances.

 ORIGINAL

1 IV. ARGUMENT:

2 1. THE STATE DISAGREES THAT THE OPNION BELOW
3 IMPLICATES SEARCH OF A VEHICLE INCIDENT TO ARREST
4 OR THAT IT IS CONTRARY TO ESTABLISHED PRECEDENT

5 In his prior appeal, based on *Arizona v. Gant*, Millan raised for the first time on
6 appeal a suppression challenge, and the matter was remanded to the trial court to conduct a
7 suppression hearing. *See State v. Robinson*, 171 Wn.2d 292, 298, 253 P.3d 84 (2011)
8 (consolidated with Millan's case). The court of appeals affirmed the trial court's denial of
9 Millan's suppression motion based on the fact that the gun in the back seat of Millan's car
10 was first observed in open view, sitting on its spine with the hand grip/butt pointing up,
11 and then validly retrieved pursuant to exigent circumstances. The exigent circumstances
12 were that Millan's wife, whom he had recently assaulted was upset and obviously had been
13 crying. CP 135. The car was going to be released to Millan's wife. CP 136. Given this
14 context, the trial court found that this created a safety concern for the officers and for the
15 public. *See* CP 137; RP 01-11-12, p. 37, ln. 24 to p. 38, ln. 5. The court concluded the
16 safety concern justified securing the firearm. CP 137.

17 Here, the petitioner seeks review of the court of appeals decision affirming the
18 denial of the suppression motion. The petitioner claims that the court of appeals decision
19 was contrary to this court's holdings on search of a vehicle incident to arrest. *See* Petition
20 at 14 (citing *Buelna Valdez*, 167 Wn.2d at 773). However, the court of appeals holding is
21 not contrary to established law where it held that the search was proper because it was
22 independently supported by grounds other than search incident to arrest. *See State v.*
23 *Smith*, 177 Wn.2d 533, 540, 303 P.3 1047 (2013) (discussing independent source
24 doctrine). The fact that *Millan* was handcuffed and locked in the back of the patrol car at
25

1 the time of the gun was seized is irrelevant where the seizure was justified on other valid
2 independent grounds. Where Millan's wife was upset, the car was going to be turned over
3 to her, and the gun had been observed in open view, leading to safety concerns for the
4 officers and the public, the trial court properly concluded, and the court of appeals properly
5 held, that the seizure of the gun was lawful. The petition should be denied.

6
7 V. CONCLUSION:

8 The petition for review should be denied where the court of appeals properly
9 affirmed the lower court because the gun was seized for exigent circumstances and the
10 holding is not contrary to established authority.

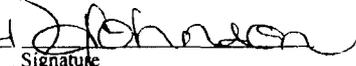
11 DATED: January 17, 2014.

12
13 MARK LINDQUIST
14 Pierce County
15 Prosecuting Attorney

16 
17 STEPHEN TRINEN
18 Deputy Prosecuting Attorney
19 WSB # 30925

20 Certificate of Service:

21 The undersigned certifies that on this day
22 she delivered by U.S. Mail or ABC LMI delivery
23 to the attorney of record for the appellant/respondent
24 a true and correct copy/copies of the document to which this
25 certificate is attached. 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 the date below.

1/21/14 
Date Signature