

WASHINGTON STATE SUPREME COURT

STATE OF WASHINGTON

NO. 90629-7

Respondent,

C.O.A. NO. 43996-4-II

CAUSE NO. 12-1-00114-4

VS.

STATEMENT OF

WILLIAM BOYD SHOWERS

ADDITIONAL AUTHORITY

Appellant,

1. IDENTITY OF PETITIONER

Mr William Boyd Showers ask this court to accept this STATEMENT OF ADDITIONAL AUTHORITY

Received
Washington State Supreme Court

OCT 27 2014

Ronald R. Carpenter
Clerk

ARGUMENT

The suppression of the evidence found in Showers truck being raised for the first time on appeal and if the search of the vehicle was illegal under ARIZONA V. GANT, 556 U.S. 332, 129 S.Ct. 1710, 173 L.Ed. 2d 485 (2009).

1. TABLE OF AUTHORITIES

2.
3. FEDERAL CASES

4. Arizona v. Gant, 556 U.S. 332, 129 S.Ct. 1710, 173 L.Ed. 2d 485 (2009).

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6.
7. Washington State Cases

8. State v. Cross, 166 Wn. App. 320, 271 P.3d 264 (JAN 31, 2012).

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11. State v. Johnson, 164 Wn. App. 486, 273 P.3d 446 (Oct 25, 2011).

12.
13. State v. Nyegaard, 172 Wash. 2d 1006, 260 P.3d 208 (2011).

14.
15. State v. Pearsall, 164 Wn. App. 720, 267 P.3d 402 (NOV 8, 2011).

16.
17. State v. Robinson, 171 Wn. 2d 292, 253 P.3d 84 (April 14, 2011).

18.
19. State v. Slighte, 164 Wn. App. 717, 267 P.3d 401 (NOV 8, 2011).

1. State v. Robinson, 171 Wn.2d 292, 253 P.3d 84 (April, 14, 2011)
2. [171 Wn.2d 296] 1 The petitioners in these two consolidated
3. cases seek to challenge, for the first time on appeal, the
4. admissibility of evidence against them. In both cases, the
5. trials were concluded prior to the United States Supreme Courts
6. decision in ► Arizona v. Gant, 556 U.S. ---, 129 S.Ct. 1710, 173 L.Ed.
7. 2d 485 (2009), a case that limited the circumstances in which
8. police may conduct a warrantless search of an automobile
9. incident to arrest. Though the trials were concluded, the
10. cases were still pending on direct appeal at the time
11. ► Gant was decided. In Francisco Millan's case, the court
12. of appeals concluded that any error was waived by his failure
13. to object to the admission of evidence at trial.
14. ► State v. Millan, 151 Wash.App. 492, 499-500, 212 P.3d 603 (2009),
15. review granted, ► 168 Wash.2d 1005, 226 P.3d 781 (2010).

16. In Michael Robinson's case, the court of appeals considered
17. and rejected his argument that the search was unconstitutional
18. without considering the effect of ► Gant. We conclude that,
19. in this circumstance, principles of issue preservation and waiver
20. do not preclude criminal defendants from raising a
21. constitutional objection for the first [171 Wn.2d 297] time on appeal.

22. We therefore reverse the court of appeals in both cases ►
23. (FN1) However because neither the petitioner nor the state had
24. the opportunity or incentive to develop the record, we remand
25. --- 253 P.3d 86 --- each case to the superior court
26. for a suppression hearing in light of ► Gant and its progeny.

1. State v. Nyegaard, 172 Wash. 2d 1006, 260 P. 3d 208 (2011)

2. In Ryan Joseph Nyegaard, we incorporate by reference the
3. facts recited in our February 23, 2010 published opinion affirming
4. Nyegaard's conviction and sentence. State v. Nyegaard, 154 Wash. App.
5. 641, 226 P. 3d 783 (2010) (J. Houghton dissenting). We held that,
6. under our decision in State v. Millan, 151 Wash. App. 492, 212 P. 3d
7. 603 (2009), Reversed sub nom. State v. Robinson, 171 Wash. 2d 292,
8. 253 P. 3d 84 (2011), because Nyegaard had failed to move to suppress
9. the evidence seized from his car, which police had searched
10. incident to his arrest, he had failed to preserve for appeal
11. whether this seizure was illegal under ARIZONA v. Gant, 556
12. U.S. 332, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009). (FN1) Nyegaard,
13. 154 Wash. App. at 646, 226 P. 3d 783. [164 Wn. App. 627] our
14. --- 267 P. 3d 382-83. --- State Supreme Court granted
15. Nyegaard's petition for review and remanded his appeal to
16. us to reconsider in light of Robinson. State v. Nyegaard,
17. 172 Wash. 2d 1006, 260 P. 3d 208 (2011). The parties submitted
18. supplemental briefs addressing the effects of Robinson on
19. Nyegaard's appeal.

20. In Robinson, our Supreme Court held that (1) Gant
21. applies retroactively to appellants whose cases were pending on
22. direct appeal when the United States Supreme Court issued
23. Gant and (2) failure to raise a suppression issue below does not
24. bar a defendant from raising a Gant issue for the first time
25. on appeal if he meets four specific criteria.
26. (FN2) Robinson, 171 Wash. 2d at 303-08 P. 3d 84. In its

1. Supplement brief the state concedes that (1) under
2. Robinson, Nyegaard is entitled on appeal to challenge the
3. vehicle search that led to his arrest and conviction; and
4. (2) the vehicle search incident to Nyegaard's arrest was
5. improper under Gant on the current record, which, in the
6. absence of a motion to suppress based on Gant below,
7. was made without exploring other possible legal grounds
8. for the search. The parties agree that the proper
9. remedy is to remand this matter back to the superior
10. court for a new suppression hearing.

11. Accepting the state's concession of error and
12. Nyegaard's concession that remand is the proper remedy,
13. we hold that the vehicle search and seizure of evidence
14. incident to Nyegaard's arrest was illegal under Gant and
15. [164 Wn. App. 628] the facts before us in this appeal,
16. and we remand to the trial court for further proceedings
17. consistent with Robinson.

18. State v. Cross, 166 Wn. App. 320, 271 P.3d 264 (JAN, 31 2012)

19. Kevin Cross appeals his jury conviction for first degree
20. unlawful possession of a firearm, [166 Wn. App. 321] gross
21. misdemeanor harassment, resisting arrest, and obstructing a law
22. officer, arguing that the search of his car was unlawful
23. under Arizona v. Gant, 556 U.S. 332, 129 S. Ct. 1710, 173 L. Ed.
24. 2d 485 (2009). In our earlier opinion filed on June 29, 2010,

25. we concluded that Cross did not preserve for review any
26. error related to the vehicle search incident to arrest.

1. But the WASHINGTON State SUPREME Court held other
2. wise in *State v. Robinson*, 171 Wash. 2d 292, 253 P.3d 84 (2011),
3. and remanded cross's appeal to us for further consideration.

4. The parties agree that the proper remedy is to remand
5. this matter back to the Superior court for a new
6. suppression hearing.

7.
8. *State v. Slighte*, 164 Wn. App. 717, 267 P.3d 401 (Nov. 8 2011)
9. [164 Wn. App. 718] (1) on August 24, 2010, we issued an
10. opinion affirming JASON RONALD SLIGHTE'S jury conviction for
11. methamphetamine possession with intent to deliver.

12. We held that, under our decision in *State v. Millan*, 151
13. Wash. App. 492, 212 P.3d 603 (2009) reversed sub nom.,
14. *State v. Robinson*, 171 Wash. 2d 292, 253 P.3d 84 (2011), because
15. Slighte had failed to move to suppress the methamphetamine
16. seized from his car, which police had searched incident to
17. his arrest, he had failed to preserve for appeal whether
18. this seizure was illegal under *Arizona v. Gant*, 556 U.S. 332,
19. 129 S.Ct. 1710, 173 L.Ed. 2d 485 (2009) (FN1) *State v. Slighte*,
20. 157 Wash. App. 618, 621, 623, 238 P.3d 83 (2010). Our State
21. Supreme Court granted Slighte's petition for review and
22. remanded back to us to reconsider Slighte's appeal in
23. light of *Robinson*. *State v. Slighte*, 172 Wash. 2d 1003, 257
24. P.3d 1112 (2011). We ordered the parties to submit
25. supplemental briefs addressing the effect of *Robinson*
26. on Slighte's appeal.

1. State v. Pearsall, 164 Wn. App. 720, 267 P.3d 402 (Nov. 8, 2011)

2. [164 Wn. App. 721] (1) Karla Gae Pearsall appeals her jury
3. conviction for unlawful possession of a controlled substance.

4. ▶ (FN 1) She argues that the search of her vehicle incident
5. to her arrest was illegal and, therefore, the evidence should
6. be suppressed. We remand to the trial court for further
7. proceedings.

8. (2) We incorporate by reference the facts set forth in our

9. May 25, 2010 published opinion affirming Pearsall's conviction.

10. State v. Pearsall, 156 Wash. App. 357, 231 P.3d 849 (2010) (J. Houghton
11. dissenting). We held that, under our decision in State v. Millan,

12. 151 Wash. App. 492, 212 P.3d 603 (2009), Reversed sub nom.

13. State v. Robinson, 171 Wash. 2d 292, 253 P.3d 84 (2011), because

14. Pearsall had failed to move to suppress the drug evidence

15. seized from her car, which police had searched incident to

16. her arrest, she had failed to preserve for appeal, whether

17. this seizure was illegal under ARIZONA v. Gant, 556 U.S. 332,

18. 129 S.Ct. 1710, 173 L. Ed. 2d 485 (2009) (FN 2) Pearsall, 156 Wash.

19. App. at 360-61, 231 P.3d 849. OUR State [164 Wn. App. 722]

20. Supreme Court granted Pearsall's petition for Review

21. and remanded her appeal to us to reconsider in light

22. of Robinson. State v. Pearsall, 172 Wash. 2d 1003, 257 P.3d 1113

23. (2011).

24. The parties submitted supplemental briefs

25. addressing the effect of Robinson on Pearsall's

26. appeal.

1. State v. Johnson, 164 Wn. App. 486, 273 P.3d 446 (Oct. 25, 2011)

2. [164 Wn. App. 487] (1) Jesse Ray Johnson appeals his Jury
3. conviction for two counts of unlawful possession of a controlled
4. substance (heroin and cocaine), count I and V, and one count
5. unlawful use of drug paraphernalia, count II. He argues that
6. the search of his vehicle incident to his arrest was illegal and
7. that the evidence should be suppressed. We reverse and
8. remand to the trial court for further proceedings.

9. (2) We incorporate by reference the facts recited in our
10. May 11, 2010, published opinion affirming Jesse Ray Johnson's
11. conviction. (FN 1) State v. Johnson, 156 Wash. App.

12. ----- 273 P.3d 447 -----

13. 82, 231 P.3d 225 (2010) To view Preceding link Please click here

14. (J. Houghton dissenting in part). We held that, under our decision
15. in State v. Millan, 151 Wash. App. 492, 212 P.3d 603 (2009) Reversed
16. sub nom State v. Robinson, 171 Wash. 2d 292, 253 P.3d 84 (2011),
17. because Johnson had failed to move to suppress the evidence
18. seized from his car, which police had searched incident to
19. his arrest, he had failed to preserve for appeal whether
20. this seizure was [164 Wn. App. 488] illegal under

21. ARIZONA V. GANT, 556 U.S. 332, 129 S. Ct. 1710, 173 L. Ed. 2d
22. 485 (2009). (FN 2) Johnson, 156 Wash. App. at 93, 231 P.3d 225. OUR

23. State Supreme Court granted Johnson's petition for review and
24. remanded his appeal to us to reconsider in light of Robinson.

25. State v. Johnson, 172 Wash. 2d 1001, 257 P.3d 1112 (2011). The parties submitted
26. supplemental briefs addressing the effect of Robinson on Johnson's appeal.

OCT 27 2014

Ronald R. Carpenter
Clerk

CERTIFICATE OF SERVICE BY MAILING

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I William Boyd Showers, being over the age of majority and competent to testify herein, over and declare the following facts to be true, correct, and complete, under penalty of perjury pursuant to the laws of the State of Washington and of the United States of America:

That on the 23rd day of October, 2014 I placed into the U.S. Mail at the LARCH Mountain correctional complex, with the proper prison postage forms attached, copies of the following documents:

- 1) Statement of Additional Authority's
- 2) CERTIFICATE OF SERVICE BY MAILING

These document shipments were addressed to the following parties.

1) WASHINGTON State Supreme Court
TEMPLE OF JUSTICE
P.O. Box 40929
Olympia, Wash. 98504-0929

1. 2) DAVID J. BURKE
2. PACIFIC county Prosecuting Attorney
3. 300 MEMORIAL DRIVE
4. P.O. Box 45
5. South Bend, Wash. 98586

10. ~~William Boyd Showers~~
11. William B. Showers # 942484
12. LARCH Correctional complex
13. 15314 DOLE Valley Road
14. Yacolt, Wash. 98675-9531