

63408-9

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NO. 63408-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

DWAYNE PARKS,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CHRIS WASHINGTON

BRIEF OF RESPONDENT

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I. ISSUES PRESENTED

1. Whether the State must concede that the defendant's conviction for Unlawful Possession of a Firearm must be reversed because the vehicle search incident to his arrest (during which the firearm was found), while proper when it was conducted, has subsequently been deemed unconstitutional and the Washington Supreme Court has rejected the "good faith" exception to the exclusionary rule?

II. STATEMENT OF THE CASE

Dwayne Parks was charged and convicted of Unlawful Possession of a Firearm after a bench trial. CP 1, 28, 32. The firearm was found during a search of a vehicle in which Parks was a passenger. This search was conducted incident to the arrest of the driver, Christopher Wilson, for running a red light, failing to stop after being signaled to do so by a law enforcement officer, and for driving with a suspended license. CP 23-26, 28-30; 3-17-09 RP 23-29. Although the officer had valid safety concerns at the time of the stop, all of the vehicle occupants had been removed and secured at the time of the search. Id.

The stop and search of the vehicle occurred on October 24, 2008. CP 28. Parks' CrR 3.6 motion was heard on March 15, 2009. CP 23. The court denied the motion to suppress. CP 23-27.

III. ARGUMENT

The vehicle search (and CrR 3.6 hearing) in this case occurred prior to the United States Supreme Court decision in Arizona v. Gant, ___ U.S. ___, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (April 21, 2009), and the Washington Supreme Court decisions in State v. Patton, 167 Wn.2d 379, 394, 219 P.3d 651 (2009), and State v. Valdez, 167 Wn.2d 761, 224 P.3d 751 (2009). As these decisions make clear, while the vehicle search in this case was lawful at the time it was conducted, it was subsequently held to be unlawful under the federal and state constitutions. See, e.g., Patton, 167 Wn.2d at 384 (holding that under article I, section 7 of the Washington Constitution, the search incident to arrest exception "requires a nexus between the arrestee, the vehicle, and the crime

of arrest, implicating safety concerns or concern for the destruction of evidence of the crime of arrest.”).

In previous cases involving pre-Gant vehicle searches, the State has argued that when officers have acted in good faith reliance on established case law, the exclusionary rule does not apply. Regrettably, that argument has recently been rejected by the Washington Supreme Court. See State v. Afana, ___ Wn.2d ___, 2010 WL 2612616, 1 (2010). While the State believes that Afana was wrongly decided, it is now the law and binding on this court and in this case.

The State has reviewed the record in this case and has concluded that there is no alternate basis under which the search may be upheld. Specifically, there was no nexus between the arrestee, the crime of arrest, and the vehicle that would justify the search in this case. The firearm evidence in this case would be suppressed on remand and the State would be unable to proceed to trial. The State concedes Parks’ conviction must be reversed.

IV. CONCLUSION

For the reasons stated above, the State of Washington concedes that Parks' conviction for Unlawful Possession of a Firearm must be reversed.

DATED this 22nd day of July, 2010.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Gregory Link and Oliver Davis, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. DWAYNE PARKS, Cause No. 63408-9-I, in the Court of Appeals, Division I, for the State of Washington.

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

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Name
Done in Seattle, Washington

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