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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
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NO. 27415-2-III

COURT OF APPEALS

STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

MICHELLE MONIQUE DELCHAMBRE,

Defendant/Appellant.

SUPPLEMENTAL APPELLANT'S BRIEF

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ARGUMENT

State v. Robinson, slip opinion 83525-0 (4/14/2011) is currently the controlling authority in the State of Washington concerning a criminal defendant's right to raise and pursue a constitutional issue not previously addressed in the trial court.

As in the *Robinson* case, Ms. Delchambre relies upon *Arizona v. Gant*, 556 U.S. ___, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009) which was decided after her case was heard by the trial court. The only difference being that Ms. Delchambre actually raised a suppression issue in the trial court which was denied.

Ms. Delchambre's suppression issue is based upon the same facts and circumstances as involved in *Gant*. She was arrested for driving with a suspended Arizona driver's license. (8/6/2008 RP 18, ll. 19-25; RP 19, ll. 1-5).

The arresting officer searched the car following the stop. The trial court did not enter findings of fact and conclusions of law. The trial court's oral ruling ruled that the search of the vehicle was legal due to Ms. Delchambre's suspended license. (8/6/2008 RP 44, l. to RP 45, l. 23).

The State, in its original brief, argues the "good faith exception" set forth in *United States v. Leon*, 468 U.S. 897, 105 S. Ct. 3405, 82 L. Ed

2d 677 (1984). The good faith exception does not apply in the State of Washington. *State v. Afana*, 169 Wn. 2d 169 (2011).

The State also argues that Ms. Delchambre waived her right to assert the benefits of the *Gant* decision. Again, the State is in error.

The *Robinson* decision addresses issue preservation as it pertains to failure to object to admissibility of evidence prior to trial. Waiver does not apply where a criminal defendant could not know that an item was unlawfully seized.

The *Robinson* Court stated;

...[P]rinciples of issue preservation do not apply where the following four conditions are met: (1) a court issues a new controlling constitutional interpretation material to the defendant's case, (2) that interpretation overrules an existing controlling interpretation, (3) the new interpretation applies retroactively to the defendant, and (4) the defendant's trial was completed prior to the new interpretation.

State v. Robinson, supra.

All four of the requirements for issue preservation are present in Ms. Delchambre's case.

The *Gant* decision is a new controlling constitutional interpretation that applies to her case. It overrules an existing interpretation. *See: State v. Stroud*, 106 Wn. 2d 144, 720 P. 2d 436 (1986); *New York v. Belton*, 453 U.S. 454, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981).

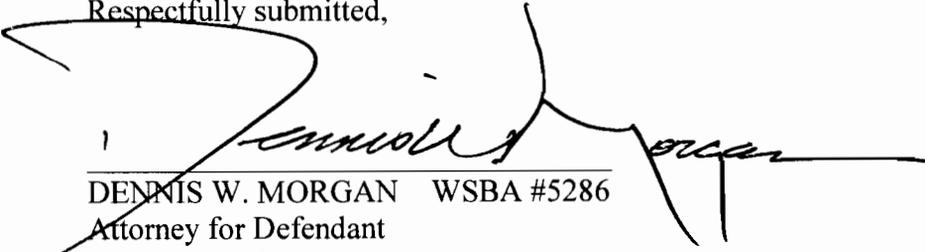
Retroactive application has been given to the *Gant* decision in Washington. *State v. Valdez*, 167 Wn. 2d 761, 242 P. 3d 751 (2009); *State v. Patton*, 167 Wn. 2d 379, 219 P. 2d 651 (2009).

Finally, as previously indicated, Ms. Delchambre's trial was completed prior to the *Gant* decision.

Ms. Delchambre otherwise relies on all pervious briefing and additional statements of authority supplied to the Court.

DATED this 9th day of June, 2011

Respectfully submitted,



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