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SUPREME COURT
STATE OF WASHINGTON

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BY RONALD R. CARPENTER

Court of Appeals No. 33653-7-II

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SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

REYES RIOS RUIZ,
Respondent.

**RESPONSE TO AMICUS BRIEFING OF WASHINGTON
ASSOCIATION OF PROSECUTING ATTORNEYS**

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I. Introduction

The Washington Association of Prosecuting Attorneys (WAPA) has filed an amicus brief in this case. In its brief, WAPA makes several arguments: *Arizona v. Gant* articulates a new constitutional rule and therefore does not apply to cases on collateral review; (2) under the federal “good faith” exception to the exclusionary rule, there is no basis to suppress the evidence obtained in good faith reliance on pre-*Gant* case law; and (3) under article I, § 7 of the Washington constitution, the evidence discovered pursuant to the search of a vehicle incident to the arrest of an occupant should not be suppressed post-*Gant* when the officers conducted the search under presumptively valid case law in effect at the time of the search.

II. Response

The Washington exclusionary rule requires suppression of the evidence found during the search of the vehicle in this case since there is no “good faith” exception to the Washington Exclusionary rule.¹

WAPA claims that an exclusionary rule exists in Washington under which the evidence discovered pursuant to the warrantless and unconstitutional search of the vehicle in this case should not be

¹ Although not addressed in this Response, Mr. Ruiz does not concede that *Gant* announced a “new rule” such as to render it inapplicable to collateral attacks or to all post-*Stroud* convictions. Further, Mr. Ruiz does not concede that the Federal

suppressed. WAPA is incorrect.

The exclusionary rule is “a judicially created remedy designed to safeguard Fourth Amendment rights ...”. [*Unites States v.] Leon*, 468 U.S. [897,] at 906, 104 S.Ct. [3405], at 3412 (*quoting United States v. Calandra*, 414 U.S. 338, 348, 94 S.Ct. 613, 620, 38 L.Ed.2d 561 (1974)). The [*Leon*] Court held the exclusionary rule does not require suppression of “evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant ...”. *Leon*, 468 U.S. at 922, 104 S.Ct. at 3420.

Based on the substantial difference in wording between the Fourth Amendment and article 1, section 7, of the Washington State Constitution, the Washington Supreme Court has held freedom from unreasonable searches and seizures may be interpreted more expansively under the state constitution than under the federal constitution. [*State v.] Jackson*, 102 Wn.2d [432,] at 439, 688 P.2d 136 [(1984)]. Thus, when the United States Supreme Court departed from the *Aguilar-Spinelli* standard in *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), *Jackson*, 102 Wn.2d at 443, 688 P.2d 136, rejected the *Gates* approach in favor of the “well established protections against unreasonable searches” provided by *Aguilar-Spinelli*.

Const. art. 1, § 7 similarly provides independent state grounds for the exclusionary rule. *See State v. White*, 97 Wn.2d 92, 640 P.2d 1061 (1982). **Under the Washington Constitution, the exclusionary rule serves not merely as a remedial measure for unconstitutional government actions, but rather to assure judicial integrity and preserve the individual's right to privacy.** *White*, at 109-10, 640 P.2d 1061. **“The important place of the right to privacy in Const. art. 1, § 7 seems to us to require that whenever the right is unreasonably violated, the remedy must follow.”** *White*, at 110, 640 P.2d 1061.

exclusionary rule does not require suppression of the evidence found during the search of the vehicle in this case.

State v. Crawley, 61 Wn.App. 29, 34, 808 P.2d 773, review denied 117 Wn.2d 1009 (1991).

Unlike in the Fourth Amendment, the word “reasonable” does not appear in any form in the text of article I, section 7 of the Washington Constitution. We have also long declined to create “good faith” exceptions to the exclusionary rule in cases in which warrantless searches were based on a reasonable belief by law enforcement officers that they were acting in conformity with one of the recognized exceptions to the warrant requirement. *State v. White*, 97 Wn.2d 92, 110, 640 P.2d 1061 (1982) (“the language of our state constitutional provision ... shall not be diminished by ... a selectively applied exclusionary remedy.”). We have also repeatedly held that article I, section 7 provides greater protection of individual privacy than the Fourth Amendment. *E.g.*, *State v. Jackson*, 150 Wn.2d 251, 259, 76 P.3d 217 (2003); *State v. Jones*, 146 Wn.2d 328, 332, 45 P.3d 1062 (2002); *State v. Vrieling*, 144 Wn.2d 489, 495, 28 P.3d 762 (2001); see also Charles W. Johnson, Survey of Washington Search and Seizure Law: 2005 Update, 28 Seattle U.L. Rev. 467, 587 (2005).

State v. Morse, 156 Wn.2d 1, 9-10, 123 P.3d 832 (2005).

The Washington Supreme Court has rejected the “good faith” doctrine and in doing so explained, “Under the Washington Constitution, the exclusionary rule serves not merely as a remedial measure for unconstitutional government actions, but rather to assure judicial integrity and preserve the individual's right to privacy.” *State v. Crawley*, 61 Wn.App. 29, 34, 808 P.2d 773 (quoting *State v. White*, 97 Wn.2d 92, 109-10, 640 P.2d 1061 (1982), review denied, 117 Wn.2d 1009 (1991)).

“Until the United States Supreme Court has overruled *White* and

Gunkel, the exclusionary rule stated therein remains valid.” *State v. Sanchez*, 74 Wn.App. 763, 768, 875 P.2d 712 (1994), review denied 125 Wn.2d 1022 (1995), citing *Crawley*, 61 Wn.App. at 35, 808 P.2d 773.

Thus, Washington courts have specifically and repeatedly rejected the creation of a “good faith” exception to the exclusionary rule under Article 1, § 7.

In arguing that this court should effectively create a “good faith” exception to the warrant requirement applicable to searches of vehicle incident to the arrest of an occupant occurring between *Stroud* and *Gant*, WAPA argues mainly that such a rule is prudent because the purpose of the exclusionary rule is to deter future misconduct by police and State agencies. However, in making its arguments, WAPA minimizes the other two purposes served by the broader exclusionary rule in Washington law--to “assure judicial integrity and preserve the individual's right to privacy.” *Crawley*, 61 Wn.App. at 34, 808 P.2d 773.

Judicial integrity would not be preserved if this court sanctioned the admission of evidence discovered pursuant to searches which the United States Supreme Court has clearly and unequivocally ruled are unconstitutional. Prior to *Stroud*, Washington citizens were entitled to such a right of privacy in their vehicles that, absent actual exigent circumstances, police were required to obtain a search warrant before a

lawful search of a vehicle could occur. *See State v. Ringer*, 100 Wn.2d 686, 674 P.2d 1240 (1983), *overruled in part by State v. Stroud*, 106 Wn.2d 144, 720 P.2d 436 (1986). However, the *Gant* decision makes clear that the *Stroud* court misinterpreted *Belton* when it found that *Belton* authorized searches of vehicles incident to the arrest of an occupant of that vehicle in all situations. Thus, the correct understanding of the scope of a Washington citizen's right to privacy remains the scope found by *Ringer*, not the diminished scope found by *Stroud*.

Were this court to find that a "good faith" exception existed rendering the fruits of the warrantless and unconstitutional vehicle searches conducted between *Stroud* and *Gant* admissible, this court would, in effect, be ignoring the lawful scope of a citizen's privacy rights under both the Fourth Amendment and Article 1, § 7. Turning a blind eye to such widespread violations of the privacy rights of the citizens of Washington would do very much to decrease the integrity of the judiciary and to erode individuals' right to privacy.

III. CONCLUSION

WAPA is incorrect that a "good faith" exception exists under Washington law. WAPA is further incorrect that this court should adopt such an exception. Adopting such an exception would be contrary to the acknowledged Fourth Amendment and Article 1, § 7 privacy rights of all

Washington citizens and would be contrary to decades of prior decisions holding that Article 1, § 7 provides greater privacy protection than does the Fourth Amendment.

DATED this 15th day of June, 2009.

Respectfully submitted,

Reed Speir, WSBA No. 36270
Attorney for Reyes Rios Ruiz

CERTIFICATE OF SERVICE

Reed Speir hereby certifies under penalty of perjury under the laws of the State of Washington that on the 16th day of June, 2009, I delivered via US Mail a true and correct copy of the Response to which this certificate is attached to the following:

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Signed at Tacoma, Washington this 15th day of June, 2009.

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