

No. 85608-7

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

DARREN L. LOUTHAN,
Appellant.

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
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SUPPLEMENTAL BRIEF OF RESPONDENT

H. STEWARD MENEFEE
Prosecuting Attorney
for Grays Harbor County

BY: 
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T A B L E

Table of Contents

Identity of Responding Party	1
Proceedings Below	1
Factual Background	1
Issues Presented	2
1. The defendant was validly arrested	2
2. The search of the vehicle incident to arrest was lawful at the time of the arrest of the defendant	2
3. The defendant did not preserve the issues raised herein for appeal.	3
4. The search of the defendant's vehicle should be found valid as a search for evidence related to the crime of arrest. ...	4

TABLE OF AUTHORITIES

Table of Cases

<u>Arizona v. Gant</u> , 556 U.S. 332, 129 S. Ct. 1710 (2009)	3-5
<u>Griffith v. Kentucky</u> , 479 U.S. 314, 328, 107 S. Ct. 708, 93 L.Ed 2d 649 (1987)	3
<u>New York v. Belton</u> , 453 U.S. 454, 101 S. Ct. 2860, 69 L.Ed. 2d 768 (1981)	3
<u>State v. Fladebo</u> , 113 Wn.2d 388, 779 P.2d 707 (1989)	5
<u>State v. Huff</u> , 64 Wn.2d 641, 646, 826 P.2d 698, review denied 119 Wn.2d 1007 (1992)	2

<u>State v. Johnson</u> , 128 Wn.2d 431, 909 P.2d 293 (1996)	5
<u>State v. Louthan</u> , 158 Wn.App. 732, 242 P.3d 954 (2010) (No. 38472-8-II)	1
<u>State v. Patton</u> , 167 Wn.2d 379, 219 P.3d 651 (2009)	5
<u>State v. Robinson</u> , 171 Wn.2d 292, 254 P.3d 84 (2011)	4
<u>State v. Snapp</u> , 174 Wn.2d 177, 275 P.3d 289 (2012)	1, 4-6
<u>State v. Stroud</u> , 106 Wn.2d 144, 152, 720 P.2d 436 (1986)	3-5
<u>State v. Valdez</u> , 167 Wn.2d 761, 780-81 (2009)	5
<u>State v. Vrieling</u> , 144 Wn.2d 489, 28 P.3d 762 (2001)	5

STATUTES

RCW 69.50.412	2
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Table of Court Rules

CrR 3.6(a)	4
ER 103(a)	4
RAP 2.5(a)	4

OTHER

Article 1, Section 7 of the Washington State Constitution	3-6
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Identity of Responding Party

The State of Washington by and through Gerald R. Fuller, Chief Criminal Deputy, Grays Harbor County Prosecuting Attorney's Office

Proceedings Below

The defendant was convicted in Grays Harbor Superior Court on October 13, 2008, of Violation of the Uniform Controlled Substances Act - Possession of Methamphetamine following denial of the defendant's Motion to Suppress and submission of the case to the trial court on stipulated facts. An appeal was filed to the Court of Appeals, Division II. The defendant's conviction was affirmed State v. Louthan, 158 Wn.App. 732, 242 P.3d 954 (2010) (No. 38472-8-II). The defendant filed a Petition for Review to this court. The matter was stayed pending decision in State v. Snapp, 174 Wn.2d 177, 275 P.3d 289 (2012). Following the decision in Snapp, this court granted the Petition for Review.

Factual Background

The pertinent facts surrounding the defendant's arrest are undisputed and are as set forth in the opinion of the Court of Appeals below. A copy of the Findings of Fact and Conclusions of Law entered by the trial court following the Motion to Suppress is attached as Appendix A. For purposes of the proceedings at this point, the pertinent facts are summarized as follows.

The defendant's motor vehicle was stopped by Officer Hayden of the Montesano Police Department for driving through a portion of

Highway 107 that was closed due to flooding. Following brief contact with the defendant, Officer Hayden concluded that the defendant appeared to be under the influence of drugs. Officers observed what they recognized as drug paraphernalia inside the vehicle. The defendant was arrested for Use of Drug Paraphernalia, RCW 69.50.412. The officer also had probable cause to arrest the defendant for Driving Under the Influence. Once the defendant was arrested, the drug paraphernalia was seized from the vehicle and additional drugs were found in the vehicle when the vehicle was searched incident to the arrest of the defendant.

Issues Presented

1. The defendant was validly arrested.

There is no serious claim that the initial arrest of the defendant was not supported by probable cause. He appeared to the officer to be under the influence of drugs, and drug paraphernalia was seen in the vehicle. The fact that the officer's stated basis for the arrest was possession of drug paraphernalia does not defeat the lawful arrest. State v. Huff, 64 Wn.2d 641, 646, 826 P.2d 698, review denied 119 Wn.2d 1007 (1992):

An arrest supported by probable cause is not made unlawful by an officers subjective reliance on, or verbal announcement of, an offense different from the one for which probable cause existed at the time of the arrest.

2. The search of the vehicle incident to arrest was lawful at the time of the arrest of the defendant.

At the time of the defendant's arrest the law was well settled.

There was a bright line rule regarding search incident to arrest. State v. Stroud, 106 Wn.2d 144, 152, 720 P.2d 436 (1986).

During the arrest process, including the time immediately subsequent to the suspects being arrested, handcuffed, and being placed in a patrol car, officers should be allowed to search the passenger compartment of the vehicle for weapons or destructible evidence. However, if the officers encounter a locked container or locked glove compartment, they may not unlock and search either container without containing a warrant.

The court in Stroud, both in the majority opinion, and in the concurring opinion held that this rule was appropriate and authorized under Article 1, Section 7 of the Washington State Constitution. Stroud 106 Wn.2d at page 171. With the exception of a prohibition against searching locked containers, the rule under Article 1, Section 7 of the Washington State Constitution was coextensive with then Fourth Amendment law regarding search incident to arrest. New York v. Belton, 453 U.S. 454, 101 S. Ct. 2860, 69 L.Ed. 2d 768 (1981).

3. The defendant did not preserve the issues raised herein for appeal.

This matter was still pending on appeal when the United States Supreme Court decided Arizona v. Gant, 556 U.S. 332, 129 S. Ct. 1710 (2009). The State agrees that the rule in Gant applies retroactively to cases pending direct appeal that are not final. Griffith v. Kentucky, 479 U.S. 314, 328, 107 S. Ct. 708, 93 L.Ed 2d 649 (1987). The fact that the ruling in Gant may apply to the current matter should not relieve this defendant

from the obligation to preserve an issue for appeal by filing a motion to suppress in the trial court. To properly preserve an objection to the admissibility of physical evidence, the defendant must, in its motion to suppress in the trial court, raise specific grounds in which the defendant is objecting to the search. CrR 3.6(a); ER 103(a); RAP 2.5(a).

In the case at hand the defendant did not challenge the search of the vehicle as properly incident to arrest. He only alleged that his arrest was unlawful. There was no challenge to the scope of the search incident to arrest. The State does acknowledge that the rules regarding preservation of issues on appeal have changed since the decision in the Court of Appeals in this matter. The defendant is now allowed to have the benefit of the ruling in Gant even though no challenge was made to the scope of the search of the vehicle. State v. Robinson, 171 Wn.2d 292, 254 P.3d 84 (2011).

4. The search of the defendant's vehicle should be found valid as a search for evidence related to the crime of arrest.

This court's decision in State v. Snapp, 174 Wn.2d 177, 275 P.3d 289 (2012) was wrongly decided. Article 1, Section of the State Constitution does not require the result reached in Snapp.

In Stroud, supra, this court held that the Fourth Amendment and Article 1, Section 7 of the Washington State Constitution were coextensive regarding the search of a motor vehicle incident to arrest. Until its most recent opinions, this court consistently adhered to the

reasoning of Stroud. State v. Fladebo, 113 Wn.2d 388, 779 P.2d 707 (1989); State v. Johnson, 128 Wn.2d 431, 909 P.2d 293 (1996); State v. Vrieling, 144 Wn.2d 489, 28 P.3d 762 (2001).

In Arizona v. Gant, 556 U.S. 332, 129 S. Ct. 1710 (2009) the United States Supreme Court determined that the Fourth Amendment mandated a more restrictive rule regarding search of a motor vehicle incident to arrest. Gant 129 Wn.2d at page 1723:

Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within the reaching distance of the passenger compartment at the time of the search or if it is reasonable to believe the vehicle contains evidence of the offense of arrest.

Shortly after Gant was decided, this court essentially held that the ruling in Gant was not sufficient to protect privacy rights under Article 1 §7 of the State Constitution. State v. Patton, 167 Wn.2d 379, 219 P.3d 651 (2009). This court later went out of its way to address the second prong of Gant, the search for evidence of the crime of arrest, in a case where the issue was not before the court. State v. Valdez, 167 Wn.2d 761, 780-81 (2009), Justice Johnson, dissenting.

Contrary to the assertion of this court in Snapp, there is nothing that requires a more restrictive standard than Gant under the Washington Constitution. This principle has been recognized by the lone dissenter in Snapp, Justice Johnson. Snapp 174 Wn.2d at page 202:

However, the majority overstates such heightened protection in the context of

lawful arrests. A probable cause standard allowing officers to search for evidence of the crime of arrest is constitutionally permissible. This requirement is derivative of the long standing search incident to arrest exception in this court's decision under Article 1, Section 7 of our Constitution.

This court has now held that there can be no basis to search a motor vehicle once the driver has been detained other than exigent circumstances or officer safety. This court has essentially held that a person's privacy interest in his motor vehicle is equivalent to the privacy interest he has in his home. This court has specifically declined to apply a standard that is "reasonable" taking into account the defendant's privacy interest in his motor vehicle, the inconvenience to the defendant of having his vehicle held at the scene or impounded, and efficient use of resources. Snapp, 174 Wn.2d at p. 194.

The decision in Snapp results in judicial rule making. Article 1, Section 7 does not require this result. The decision in Snapp should be reversed.

DATED this 26 day of July, 2012.

Respectfully Submitted,

H. STEWARD MENEFEE
Prosecuting Attorney
for Grays Harbor County

BY: Gerald R Fuller
GERALD R. FULLER
Chief Criminal Deputy
WSBA #5143

APPENDIX A

FILED
IN THE OFFICE
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'08 MAR 17 P2:54

CHESTER J. JAWN
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

DARRIN L. LOUTHAN,

Defendant.

No.: 07-1-630-6

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

THIS MATTER having come on before the undersigned judge of the above-entitled court, the court hereby enters the following:

FINDINGS OF FACT

1.

The court finds that the parties have stipulated that the police reports filed with the defendant's brief are the facts by which the court will decide this issue of law.

2.

On December 5, 2007, at approximately 8:30 p.m., Officer Hayden of the Montesano Police Department stopped a vehicle for violation of a road closure. The driver of the vehicle was the defendant.

3.

The officer made contact with the defendant and "noticed [the defendant's] pupils would not

FINDINGS OF FACT AND
CONCLUSIONS OF LAW -1-

32

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4 expand or contract.” By the appearance of the defendant, the officer concluded that he was under
5 the influence of a controlled substance.

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4.

Officer Blundred of the Montesano Police Department arrived on scene to help with the stop. From a position outside the defendant’s vehicle, on the passenger side, ~~the~~ ^{Officer} Blundred observed what appeared to be drug paraphernalia inside the defendant’s vehicle. This object was an orange juice container with a tube protruding out of the its side. DUE

5.

The officers arrested the defendant and removed him from the vehicle. The defendant and his vehicle was searched. In the vehicle the officer found a white powder believed to be methamphetamine.

Based upon the forgoing findings of fact, the court enters the following:

CONCLUSIONS OF LAW

1.

The court has jurisdiction over the parties and subject matter herein.

2.

The court declines to address the issue as to whether the Montesano Municipal Code in question violates state law.

3.

Given the defendant’s appearance to the officer and the possession of drug paraphernalia the officer had probable cause to arrest the defendant for use of drug paraphernalia pursuant to RCW 69.50.412.

4.

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4 There was a lawful justification for the defendant's arrest. It is unimportant that this was
5 not the reason expressed by the officer at the time of the arrest.

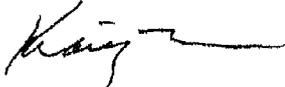
6 5.

7 The search of the defendant's vehicle was made as a result of a lawful arrest. Therefore,
8 all evidence obtained after the arrest of the defendant is admissible at trial.

9
10 DATED this 17 day of March, 2008.

11 
12 JUDGE

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14 Presented by:

15 

16 KRAIG C. NEWMAN
17 Deputy Prosecuting Attorney
WSBA #33270

14 Approved (for entry)(as to form):

15 

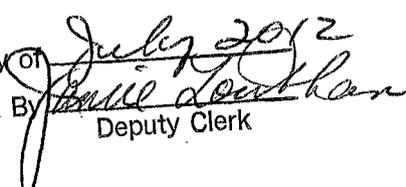
16 AMANDA G. KLEESPIE
17 Attorney for Defendant
WSBA #37114

18 KCN/jab



Certificate of Clerk of the Superior Court of
Washington in and for Grays Harbor County.
The above is a true and correct copy of the
original instrument which is on file or of
record in this court.

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Cheryl Brown, Clerk By  Deputy Clerk

FINDINGS OF FACT AND
CONCLUSIONS OF LAW -3-

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