63597-2 63597-2

No. 63597-2-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

LESLIE ANN KULL,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR SNOHOMISH COUNTY

APPELLANT'S REPLY BRIEF

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A. REPLY ARGUMENT

THE TRIAL COURT'S STROUD RATIONALE IS NO LONGER A VALID BASIS FOR THE SEARCH IN THE PRESENT CASE.

This case is very simple. Irregardless of the defense argument that there was not enough to associate the box with Ms. Kull, the trial court clearly and specifically ruled that the officer was legally entitled to search the driver, Mr. Keenan's, vehicle and all unlocked containers therein, pursuant to State v. Stroud.[1] CP 110. The court therefore employed the now-rejected Stroud rationale to approve the search of the box. See CP 110-11. That rationale no longer survives, Arizona v. Gant,[2] and the same is true under the state constitution, State v. Afana, Supreme Court No. 82600-5 (July 1, 2010, at pp. 5-6, 13-14). No good faith exception to the exclusionary rule applies under state law, Article 1, sec. 7, to eviscerate the effect of Gant.

There was no contention from the State below that the search was legal because Ms. Kull abandoned the box, as the Respondent attempts to now argue. Indeed, this attempt to avoid the operation of Gant, including by bootstrapping the old rule of

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[1] State v. Stroud, 106 Wn.2d 144, 720 P.2d 436 (1986).

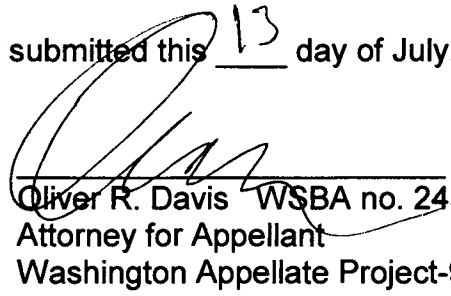
[2] Arizona v. Gant, ___ U.S. ___, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009).

Stroud into a theory of the contours of Ms. Kull's expectation of privacy, is wholly untenable. The court, counsel and litigants all reasonably proceeded from the outset under the fact that the box was searched because it was believed to be Ms. Kull's, as did the officer, who searched the box precisely because Ms. Kull became nervous when asked about it, including non-credibly denying it was hers. The defendant was of course immediately arrested by the officer once he discovered what was in the box. CP 106. The Respondent's theory of abandonment, and its associated argument that an appellate court can affirm a trial court's "evidentiary" ruling on any basis, is inapposite to the present case. See Brief of Respondent, at p. 10.

B. CONCLUSION

Based on the foregoing and on her Appellant's Opening Brief, Ms. Kull requests that this Court reverse the trial court's denial of her CrR 3.6 motion, and reverse her conviction.

Respectfully submitted this 13 day of July, 2010.



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Respondent,	)	
	)	NO. 63597-2-I
	)	
	)	
LESLIE KULL,	)	
	)	
Appellant.	)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 13TH DAY OF JULY, 2010, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X]	THOMAS CURTIS, DPA SNOHOMISH COUNTY PROSECUTOR'S OFFICE 3000 ROCKEFELLER EVERETT, WA 98201	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON, THIS 13TH DAY OF JULY, 2010.

X_____

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