



**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,)	
)	WD71799
Appellant,)	
v.)	OPINION FILED:
)	
DUSTIN TOM KINGSLEY,)	August 24, 2010
)	
Respondent.)	

**Appeal from the Circuit Court of Henry County, Missouri
Honorable James Kelso Journey, Judge**

Before: Thomas H. Newton, P.J., James Edward Welsh, and Alok Ahuja, JJ.

The State appeals the trial court’s decision granting Mr. Dustin Tom Kingsley’s motion to suppress.¹ The trial court granted the motion based on the United States Supreme Court’s ruling in *Arizona v. Gant*, 129 S. Ct. 1710 (2009). On appeal the State argues that because the officers were relying on case law that authorized the pre-*Gant* search, the “good-faith” exception to the Fourth Amendment’s exclusionary rule should apply. We affirm.

Factual and Procedural Background

Officer Dan Guynn of the Clinton Police Department observed Mr. Kingsley driving in “excess of the speed limit” and activated flashing emergency lights for him to stop. Mr. Kingsley pulled over into a parking lot where Officer Guynn approached the vehicle and asked

¹ The State is authorized to appeal an order suppressing evidence under section 547.200. Statutory references are to RSMo 2000 and the Cumulative Supplement 2009.

Mr. Kingsley for his driver's license. Mr. Kingsley stated that his license was revoked. Officer Guynn confirmed with dispatch that Mr. Kingsley's license was revoked and placed him under arrest, handcuffing him and placing him in the patrol car.

Officer David Akers arrived at the scene to assist, and Officer Guynn requested that he search the vehicle. Officer Akers asked Ms. Heather Kingsley, who was in the passenger seat, to step to the back of the car; he then performed a search of the vehicle. Inside the passenger compartment he found a sock with an eyeglass case containing baggies of methamphetamine and drug paraphernalia. He placed Ms. Kingsley under arrest for possession and put her into his patrol car. Because the registration on the vehicle was unclear, the vehicle was towed. Prior to towing the vehicle, Officer Akers completed an inventory of the vehicle's contents.

The State charged Mr. Kingsley with possession of a controlled substance as a class C felony, section 195.202. Mr. Kingsley moved to suppress the evidence as the product of an unlawful search and seizure pursuant to the United States Supreme Court's recent decision in *Gant*. The trial court found that pursuant to *Gant*, the search incident to arrest and the subsequent inventory search were performed in violation of Mr. Kingsley's Fourth Amendment rights, and it granted Mr. Kingsley's motion to suppress. The State appeals.

Standard of Review

We review the trial court's grant of a motion suppress under an abuse of discretion standard. *State v. McDonald*, 170 S.W.3d 535, 537 (Mo. App. W.D. 2005). We view the facts in the light most favorable to the decision and affirm if the decision is plausible, even if we would have weighed the evidence differently. *Id.* Whether the Fourth Amendment has been violated, however, is a question of law we review *de novo*. *Id.*

Legal Analysis

On appeal, the State argues that the trial court erred in granting Mr. Kingsley's motion to suppress because the search of the vehicle was conducted in good faith according to controlling case law at the time of the arrest.²

Prior to the Supreme Court's decision in *Gant*, most appellate courts read *New York v. Belton*, 453 U.S. 454 (1981), as permitting police to perform a warrantless search of a vehicle incident to arrest, even if the arrestee was within police custody and not within reaching distance of the vehicle. *Gant*, 129 S. Ct. at 1718-19. Courts in Missouri and the Eighth Circuit followed this interpretation of *Belton*. See *State v. Harvey*, 648 S.W.2d 87, 88-90 (Mo. banc 1983); *United States v. Hrasky*, 453 F.3d 1099, 1100 (8th Cir. 2006).

Gant, however, held that this broad reading of *Belton* was "anathema to the Fourth Amendment." 129 S. Ct. at 1721. The purpose of permitting a warrantless search of a vehicle incident to arrest is two-fold: (1) to protect the arresting officer and (2) to safeguard evidence from destruction by the arrestee. *Id.* at 1716 (citing *Chimel v. California*, 395 U.S. 752, 763 (1969)). Because neither of these exigencies are present once the arrestee is in custody, *Gant* held that the predominate reading of *Belton* was untethered from the justifications for the exception. *Id.* at 1719. Consequently, under *Gant*:

Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies.

Id. at 1723-724.

² The State does not argue inevitable discovery on appeal.

The State does not dispute that *Gant* applies retroactively to Mr. Kingsley's case because his case was not final at the time *Gant* became law. *See United States v. Johnson*, 457 U.S. 537, 562 (1982) (holding that a decision of the United States Supreme Court construing the Fourth Amendment is to be applied retroactively to convictions not final at the time of the decision, subject to certain exceptions). Nor does the State dispute that the search was unlawful under *Gant*. Rather, the State argues that because Officers Guynn and Akers were acting in reliance on their training based in the dominant interpretations of *Belton* when they searched Mr. Kingsley's car,³ their "good faith" should have allowed the evidence to be admitted. The State thus concedes that Mr. Kingsley's Fourth Amendment rights were violated but contests the exclusion of the evidence.

Evidence obtained through a constitutionally impermissible search is not necessarily excluded from being used against the defendant. *Herring v. United States*, 129 S. Ct. 695, 700 (2009). Rather, a court looks to whether applying the exclusionary rule results in deterring future Fourth Amendment violations, and whether the benefits of the deterrence outweigh its costs. *Id.* at 700-01. Thus, applying this analysis, in *United States v. Leon*, the Supreme Court held that when the police are acting on a warrant which is subsequently invalidated, their objectively reasonable "good-faith" reliance on the invalid warrant does not require the evidence to be excluded because exclusion under those facts has no deterrent effect. 468 U.S. 897, 922 (1984). *See also Massachusetts v. Sheppard*, 468 U.S. 981, 990 (1984) (applying good-faith exception where police relied on warrant which was constitutionally infirm due to judicial

³ Officer Guynn testified that he was trained that a search incident to arrest is a search conducted anytime someone is taken into custody and that the officer was to "search their person and the area in their immediate control." He learned that if an officer made an arrest, the officer was permitted "to search the vehicle for any items that [the arrested person] might have tossed, any weapons, any contraband items inside." Officer Akers similarly testified that he was trained that if officers "moved the subject from the automobile we would search his immediate control, which basically meant the passenger, or the passenger compartment of the front of the vehicle that the driver was operating in."

clerical errors); *Illinois v. Krull*, 480 U.S. 340, 360 (1987) (applying good-faith exception where officer acted in reliance on invalid statute authorizing warrantless search); *Arizona v. Evans*, 514 U.S. 1, 15 (1995) (applying good-faith exception where police relied on warrant that had been quashed); *Herring*, 129 S. Ct. at 703 (applying good-faith exception where police reasonably relied on warrant that had been recalled).

The Supreme Court, however, has never extended the good-faith exception to a search performed in violation of the Fourth Amendment to a police officer's reliance on appellate case law or the officer's training. The State urges us to follow the approach set forth by the Tenth Circuit in *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009). In *McCane*, the Tenth Circuit concluded that the good-faith exception should be applied where officers conducted a search incident to arrest in reliance on the then-predominant interpretations of *Belton*. *Id.* at 1045. It reasoned that the United States Supreme Court had not applied the exclusionary rule when it would have no deterrent effect, and application of the exclusionary rule would have no deterrent effect when officers relied on a decision of the United States Court of Appeals. *Id.*

Mr. Kingsley argues, however, that applying the good-faith exception would be inconsistent with Supreme Court decisions concerning retroactive application of constructions of the protections afforded by the Fourth Amendment. He relies on *United States v. Johnson*, 457 U.S. at 562,⁴ and *Griffith v. Kentucky*, 479 U.S. 314 (1987). *United States v. Johnson* held that a decision of the Supreme Court construing the Fourth Amendment is to be applied retroactively to all convictions not final at the time the decision was rendered, subject to exceptions that include those cases pronouncing a rule that represents a "clear break" with the past. 457 U.S. at 549, 551-52. *Griffith* held that a new rule for the conduct of criminal prosecutions applies

⁴ To avoid confusion with a subsequently cited Missouri case, we do not use the short citation name for *United States v. Johnson*.

retroactively to all cases not yet final, with no exception for cases in which the new rule constitutes a “clear break” with the past. 479 U.S. at 328. *Griffith* reasoned that failure to apply a new rule to defendants whose cases were pending at the time the rule was announced violated “basic norms of constitutional adjudication” including the integrity of judicial review and treating similarly-situated defendants the same. 479 U.S. at 322-23.

This court recently addressed these issues in a substantially similar case: *State v. Johnson*, 2010 WL 2730593 (Mo. App. W.D. July 13, 2010). A majority of the *Johnson* panel held that a vehicle search performed “incident to arrest” was unlawful under *Gant* and that the good-faith exception did not permit the evidence to be admitted. *Id.* at *13. Judge Mitchell dissented, finding that the good-faith exception should be applied to police officers’ reasonable reliance on controlling case law. *Id.* at *14. We apply the reasoning of the *Johnson* majority.

In *Johnson*, officers searched the vehicle Mr. Johnson was driving incident to his arrest for driving without a license. *Id.* at *1-2. Prior to the search, an officer had patted down Mr. Johnson and placed him into a patrol car. *Id.* at *1. Another officer stood with Mr. Johnson’s passenger outside the vehicle. *Id.* The search revealed cocaine on the dash console and in a cup holder. *Id.* at *2. Mr. Johnson was removed from the patrol car; he and his passenger were read *Miranda* warnings, handcuffed, and placed back into the patrol car. *Id.* The officers then continued their search, finding additional items alleged to be drug paraphernalia. *Id.* At trial, the items found in the vehicle were admitted over Mr. Johnson’s objection that the evidence was unlawfully obtained, and Mr. Johnson was convicted of driving without a license and possession of a controlled substance. *Id.*

The *Johnson* majority explained four primary rationales requiring it to reject application of the good-faith exception to an officer’s reliance on case law. First, it reasoned that an officer’s good-faith reliance on a warrant is significantly different from an officer’s reliance on case law

because a warrant is specific to the facts at issue, whereas case law would require an officer to extrapolate and interpret the application of past rulings to the facts in front of him or her. *Id.* at *10 (quoting *United States v. Peoples*, 668 F.Supp.2d 1042, 1048-49 (W.D. Mich. 2009)). Second, it found that applying the good-faith exception to an officer's reliance on case law would essentially reinstitute the "clear break" exception rejected by the Supreme Court in *Griffith*. *Id.* Third, the *Johnson* majority found that such an exception would create an unworkable posture in that "there would be no reason the exception would not apply equally to the defendant in the case before the Court that provides the vehicle for the Court to consider adopting a new constitutional rule." *Id.* at *11. Each defendant receiving the benefit of the good-faith exception would render the Supreme Court unable to correct erroneous precedent because of the case or controversy requirement. *Id.* at *11-12. Finally, applying the good-faith exception to cases pending at the time *Gant* was published would cause those defendants to be treated differently than Mr. Gant himself. Through analysis of *Leon*, *Herring*, *Gant*, and *Griffith*, the majority reasoned that the Supreme Court has found the inequity of treating similarly-situated defendants differently to be of greater concern than police officers' reliance on legal authority. *Id.* at *12.

Judge Mitchell, however, reasoned that the exclusionary rule is disfavored and renders evidence inadmissible only when to do so would have a deterrent effect on police misconduct. *Id.* at *15-16 (Mitchell, J., dissenting). She found no conflict between applying the good-faith exception to cases on direct review and doctrines of retroactivity because she reasoned the retroactivity doctrines direct the application of substantive law, not remedies. *Id.* at *17. She further distinguished Mr. Gant as not similarly situated to Mr. Johnson because in *Gant*, the State did not argue the good-faith exception. *Id.* at *18. While the dissent's reasoning has some merit, we do not believe the good-faith exception should be applied where an officer has relied on

appellate case law to perform a constitutionally impermissible search. In view of the extensive analysis in *Johnson*, it is unnecessary to prolong our opinion with a lengthy discussion on this matter. The legal precedents at issue were given thorough and careful consideration.

However, it should be noted that the integrity of judicial review and constitutional adjudication outweighs officer reliance. To apply the good-faith exception to cases pending when *Gant* was published would contravene the Supreme Court's clear expression that "a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final." *Griffith*, 479 U.S. at 328. The *Griffith* Court expressly considered the weight to be accorded to reliance of law enforcement officials and the burden on the administration of justice in its analysis. *Id.* at 326-27. It found those considerations outweighed by the necessity of adjudicating all currently pending cases according to constitutional law as it stands at the time of the adjudication and the necessity of treating similarly-situated defendants the same. *Id.* at 327-28. We further believe admitting unlawfully obtained evidence based on an officer's reliance on his or her training would be setting a dangerous and unworkable precedent unjustified by the holdings in *Leon* and its progeny. Because we agree with the *Johnson* majority that the good-faith exception does not extend to police officers' reliance on case law, the State's sole point is denied.

Conclusion

For the foregoing reasons, we affirm.

Thomas H. Newton, Presiding Judge

Thomas Newton, P.J., writes for the majority opinion, and James Welsh, J., concurs.
Alok Ahuja, J., writes a separate concurring opinion.

that illegally obtained evidence will not be excluded where law enforcement officers execute a search in the objectively reasonable belief that they are acting lawfully). *Id.* at *11. Even if we were otherwise capable and entitled to do so, however, we need not attempt to resolve that "tension" here, because only one of those lines of cases involves the specific issue we face.

As this Court and the parties agree, *this is not a retroactivity case*. Neither party disputes that the Supreme Court's decision in *Arizona v. Gant*, 129 S. Ct. 1710 (2009), applies here, even though the search of Kingsley's vehicle occurred before *Gant* was decided. Indeed, the State and Kingsley would not be arguing about the appropriate *remedy* for an unconstitutional search unless both sides first agreed that the search conducted in this case was unlawful under *Gant*.

Rather than retroactivity, this appeal involves the proper application of the exclusionary rule to a search which has been determined unconstitutional. On that precise issue, the Supreme Court has only recently emphasized that "[t]he fact that a Fourth Amendment violation occurred . . . does not necessarily mean that the exclusionary rule applies." *Herring v. United States*, 129 S.Ct. 695, 700 (2009). *Herring* thus makes clear that the *substantive* issue of whether a particular search complies with the Fourth Amendment – the issue which all agree *Gant* controls – is distinct from the question of the appropriate *remedy* for a Fourth Amendment violation.

Instead of applying automatically to every Fourth Amendment violation, application of the exclusionary rule requires a finding that the law enforcement conduct at issue was, in some manner, blame-worthy:

To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and *sufficiently culpable that such deterrence is worth the price paid by the justice system.*

Id. at 702 (emphasis added); *see also id.* at 701 ("[E]vidence should be suppressed "only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment."" (citations omitted)).

Kingsley's attorney admitted at oral argument that there was nothing "culpable" in the actions of law enforcement in this case. To the contrary, those officers acted not only in accordance with the nationally prevailing understanding of the scope of permissible searches under *New York v. Belton*, 453 U.S. 454 (1981), but in accordance with decisions of the Eighth Circuit, the Missouri Supreme Court, and this Court – the three appellate courts (aside from the Supreme Court) who could be called upon to assess the lawfulness of their actions. *See Johnson*, 2010 WL 2730593, at *19 (Mitchell, J., dissenting). If there was nothing "culpable" in the officers' conduct, as Kingsley has himself conceded, I cannot see how the exclusionary rule can be applied here, when *Herring* has told us that, "[t]o trigger the exclusionary rule, police conduct must be . . . sufficiently culpable that such deterrence is worth the price paid by the justice system." 129 S. Ct. at 702.

I do not pretend to have any insight as to how the United States Supreme Court may someday resolve the tension between the reasoning of its retroactivity and exclusionary rule decisions, if and when it chooses to do so. But to decide this case I do not believe we should, or need to, attempt to harmonize these two lines of Supreme Court caselaw, which appear to operate at cross purposes in this context. I believe the more proper course is instead to apply the decisions addressing the

particular issue we face. Here, the issue presented is *not* the retroactivity of the *Gant* decision, but the applicability of the exclusionary rule to an unconstitutional search. Under the Supreme Court's exclusionary rule decisions, the result here seems clear: the exclusionary rule cannot be applied to suppress evidence where the law enforcement officers conducting a search did not act in an objectively unreasonable manner.

Unless and until the *Johnson* decision is overturned by a higher court, however, we are bound to follow it. I accordingly concur in the result.

Alok Ahuja, Judge