IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. THOMAS JAMES LINDBLOM, aka THOMAS JAMES LINDBOLM, Appellant.	No. 41531-3-II UNPUBLISHED OPINION

Johanson, A.C.J. — A jury convicted Thomas James Lindblom of unlawful use of drug paraphernalia and possession of methamphetamine and marijuana. On appeal, Lindblom argues that the trial court should have granted his motion to suppress the evidence obtained from his vehicle in a warrantless search incident to his arrest. The State concedes that the Washington Supreme Court's recent ruling in *State v. Snapp*, 174 Wn.2d 177, 275 P.3d 289 (2012), requires the trial court to grant the motion to suppress. We agree and reverse and remand for further proceedings.

FACTS

On January 12, 2010, Officer Timothy Wilson saw Lindblom's vehicle driving on the shoulder of a roadway with an expired registration tag. Officer Wilson stopped the vehicle and spoke with the driver, Lindblom. Lindblom's pupils were constricted. Believing Lindblom was

driving under the influence of alcohol or drugs, Officer Wilson requested that Lindblom submit to voluntary field sobriety tests. Lindblom failed the test and Officer Wilson arrested him for driving under the influence.

Following Lindblom's arrest, Officer Wilson searched his vehicle without a warrant. During the search, Officer Wilson discovered a black bag behind the driver's seat. Inside the bag he found methamphetamine packaging supplies, scales, markers, a pill bottle containing seven Tramadol-hydrochloride pills, a small bag containing four Adderall XR pills, and a small bag of marijuana.

The State charged Lindblom with possession of methamphetamine with intent to deliver, possession of marijuana, and unlawful use of drug paraphernalia. Lindblom moved to suppress all evidence found in his vehicle. The trial court denied Lindblom's motion and ruled that *State v. Snapp*, 153 Wn. App. 485, 219 P.3d 971 (2009), *rev'd*, 174 Wn.2d 177, 275 P.3d 289 (2012) and *State v. Wright*, 155 Wn. App. 537, 230 P.3d 1063, *rev'd sub nom. Snapp*, 174 Wn.2d 177, controlled the denial of Lindblom's suppression motion. Furthermore, the trial court ruled that the warrantless search of Lindblom's vehicle did not violate article I, section 7 of the Washington State Constitution.

On November 16, 2010, a jury found Lindblom guilty of possession of methamphetamine with intent to deliver, possession of marijuana, and unlawful use of drug paraphernalia. Lindblom appealed.[1]

[1] On May 3, 2011, the State moved to stay Lindblom's appeal pending the Washington Supreme Court decisions in *Wright* and *Snapp*. Commissioner Schmidt granted the State's motion to stay on May 12, 2011. On April 5, 2012, the Supreme Court issued its opinion in *Snapp*, 174 Wn.2d 177. We lifted the stay on April 27, 2012.

ANALYSIS

I. Standard of review

The trial court denied Lindblom's motion to suppress because (1) Officer Wilson had a reasonable belief that he might find evidence of the crime in the vehicle and (2) there was a nexus between the defendant, the crime of arrest, and the search of the vehicle. We review a trial court's denial of a suppression motion to determine whether the trial court's finding of fact substantially supports their conclusions of law. *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999), *overruled on other grounds by Brendlin v. California*, 551 U.S. 249, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007). Lindblom does not dispute the trial court's findings of fact; therefore we consider them verities on appeal. *State v. Bliss*, 153 Wn. App. 197, 203, 222 P.3d 107 (2009). We review a trial court's conclusions of law on motions to suppress evidence de novo. *Mendez*, 137 Wn.2d at 214.

II. Warrantless Search

Lindblom contends that the warrantless search of his vehicle incident to his arrest was unreasonable because he was (1) not a threat to the law enforcement and (2) was unable to conceal or destroy the evidence of the crime of arrest. The State concedes that the recent decision of our Supreme Court in *Snapp* requires suppression of the evidence obtained from Lindblom's vehicle. We agree.

Washington citizens have a constitutional right to privacy, guaranteed by the Washington State Constitution, although there are limited exceptions to this right. Wash. Const. art. I, § 7; *See Snapp*, 174 Wn.2d at 187. Specifically, article 1, section 7 of the Washington State

Constitution states that warrantless searches are per se unreasonable, subject to few limited drawn out exceptions. *Snapp*, 174 Wn.2d at 187-88. Article 1, section 7 provides, "No person shall be disturbed in his private affairs, or his home invaded, without authority of law."

In *Arizona v. Gant*, 556 U.S. 332, 338, 129 S. Ct. 1710 (2009), the United States Supreme Court held that warrantless searches of a vehicle do not violate a citizen's right to due process when (1) the arrestee is within reaching distance of the passenger compartment at the time of the search or (2) it is reasonable to believe the vehicle contains evidence of the offense of arrest. *Gant*, 556 U.S. at 351. But our Supreme Court recently overruled *Wright* and *Snapp*, holding that the Washington State Constitution does not permit warrantless vehicle searches after the arrest of a recent occupant of that vehicle, when law enforcement has reasonable belief that evidence relevant to the crime of arrest is within. *Snapp*, 174 Wn.2d at 197. Our Supreme Court declined to adopt the second exception in *Gant*, ruling that reasonable belief and probable cause in the collecting of evidence from a vehicle, subject to warrantless search incident to arrest, violates article 1, section 7 of the Washington State Constitution. *Snapp*, 174 Wn.2d at 181-82 (citing *Gant*, 556 U.S. at 338). Specifically, after the suspect exits the vehicle and cannot access it, there is no longer a risk of police officer safety or the destruction of evidence. *State v. Valdez*, 167 Wn.2d 761, 775, 224 P.3d 751 (2009). After a suspect has been "'secured and removed'" from their vehicle, they cannot threaten law enforcement safety or destroy evidence. *Snapp*, 174 Wn.2d at 189 (quoting *Valdez*, 167 Wn.2d at 777).

In both *Snapp* and *Wright*, law enforcement pulled over the vehicle after witnessing a minor traffic infraction. *Snapp*, 174 Wn.2d at 182, 185. Law enforcement also had reasonable

belief that the defendant was driving under the influence. *Snapp*, 174 Wn.2d at 183, 186. The officers handcuffed and locked both defendants in the backseat of their patrol cars prior to the warrantless search of the vehicles. *Snapp*, 174 Wn.2d at 183, 186. Finally, the officers searched for evidence of drugs inside the vehicle. *Snapp*, 174 Wn.2d at 184, 186.

Here, the trial court denied Lindblom's motion to suppress, based on the appellate court decisions of *Wright*, 155 Wn. App. 537, and *Snapp*, 153 Wn. App. 485. Lindblom had no control over the contents of his vehicle subsequent to his arrest. Officer Wilson handcuffed Lindblom and locked him in the back of his patrol car. Officer Wilson then proceeded to search Lindblom's vehicle for evidence of drugs without a warrant. Lindblom was secure in the patrol car during the officer's search; he did not have access to his vehicle when the search took place. Thus, the warrantless search of Lindblom's vehicle after his arrest, based on Officer Wilson's reasonable belief that he would find evidence of drugs violated article 1, section 7 of the Washington State Constitution.

We accept the State's concession of error that the search of Lindblom's vehicle was unlawful. Finding *Snapp* controlling, we hold that the trial court should have suppressed the evidence seized from Lindblom's vehicle.

We reverse.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Johanson, A.C.J.

We concur:

Armstrong, J.

Penoyar, J.