IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JOHNNY LEE RILEY, JR., Appellant.	No. 42604-8-II UNPUBLISHED OPINION

Van Deren, J. — A jury convicted Johnny Lee Riley of unlawful possession of a controlled substance and third degree driving with a suspended license. On appeal, Riley 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 for driving with a suspended license. The State concedes that our Supreme Court's recent ruling in *State v. Snapp*, 174 Wn.2d 177, 275 P.3d 289 (2012) requires suppression of the evidence. We agree and reverse Riley's unlawful possession conviction and remand for further proceedings.[1]

FACTS

On December 6, 2010, Tacoma police officer Travis Waddell observed a Cadillac roll

[1] A commissioner of this court initially considered this appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

through a stop sign. He activated his police car's emergency lights but the Cadillac did not immediately pull over. The Cadillac drove another block, turned into an alley, and came to a stop next to a minivan. Waddell called for backup officers. The driver of the Cadillac exited the car and Waddell instructed him to return to the vehicle. The driver, later identified as Riley, said something to an occupant of the minivan and returned to the Cadillac.

The minivan passenger then left the vehicle and Waddell saw a large cloud of smoke coming from the vehicle. The smoke smelled like marijuana. The minivan passenger walked to the window of the Cadillac and bent over and said something to the driver. He then walked away from the Cadillac and stood near a garage.

After backup arrived, Waddell walked to speak with the driver of the minivan, who remained in the vehicle. Waddell had him leave the minivan and Waddell restrained him and placed wrist restraints on him. Waddell placed him into a patrol car.

Waddell then walked over to speak with Riley. Riley told Waddell he did not have a driver's license because it was suspended. Waddell had Riley leave the Cadillac, placed him in wrist restraints, and moved him to a patrol vehicle.

Waddell left to speak with the driver of the minivan. Another officer informed Riley of his *Miranda* rights. *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). Waddell returned to speak with Riley after learning from the minivan driver that he had smoked marijuana in the minivan. Waddell asked Riley if he had any illegal substances in the Cadillac. Riley responded that he had a "$20 marijuana bag." Report of Proceedings (RP) (May 10, 2011) at 20.

Waddell opened the driver's side door and conducted what he deemed a "plain view"

search of the Cadillac. RP at 37. He noticed a bulge under the floor mat on the driver's side. He lifted the mat and saw a pill bottle. The substance in the bottle field-tested positive for cocaine.

Riley testified at a CrR 3.5/3.6 hearing and denied informing the officers that he had any marijuana in the Cadillac. The trial court denied his motion to suppress the cocaine. It concluded that pursuant to *Arizona v. Gant*, 556 U.S. 332, 338, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009), "when Officer Waddell developed a reasonable suspicion that evidence of a further crime may be found in the Cadillac, he was justified in searching the Cadillac for evidence of a crime other than the initial crime for which defendant was arrested." Clerk's Papers at 23.

Riley represented himself at trial. A jury convicted him of both counts. Riley appeals.

ANALYSIS

I. Standard of Review

The trial court denied Riley's motion to suppress because it concluded that Waddell had reasonable suspicion that Riley's Cadillac contained illegal drugs. 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). 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

Riley 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 Riley's vehicle.[2] We agree.

With limited exceptions, Washington citizens have a constitutional right to privacy, guaranteed by the Washington State Constitution. Wash. Const. art. I, § 7; *see Snapp*, 174 Wn.2d at 187. Article I, section 7 provides, "No person shall be disturbed in his private affairs, or his home invaded, without authority of law."

In *Gant*, the United States Supreme Court examined warrantless searches of vehicles and held that a warrantless search of a vehicle does 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. 556 U.S. at 351.

But, our Supreme Court recently held in *Snapp*, that the Washington State Constitution does not permit post-arrest warrantless vehicle searches, even when law enforcement has reasonable belief that the vehicle contains evidence relevant to the crime of arrest. 74 Wn.2d at 197.[3] Our Supreme Court, therefore, declined to adopt the second exception in *Gant*, ruling that

---

[2] The State does not argue that *Snapp* should not be retroactively applied to Riley's search. We note that it is well settled 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, with no exception for cases in which the new rule constitutes a 'clear break' with the past." *Griffith v. Kentucky*, 479 U.S. 314, 328, 107 S. Ct. 708, 93 L. Ed. 2d 649 (1987); *State v. McCormack*, 117 Wn.2d 141, 145, 812 P.2d 483 (1991); *see also State v. Louthan*, No. 85608-7, 2012 WL 5269671, at *2 (Wash. Oct. 25, 2012) (applying *Snapp* retroactively).

[3] In *Snapp*, law enforcement pulled over the vehicle after witnessing a minor traffic infraction. 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 Snapp and a co-defendant 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.

reasonable belief and probable cause in the collecting of evidence from a vehicle, subject to warrantless search incident to arrest, violates article I, section 7 of the Washington State Constitution. *Snapp*, 174 Wn.2d at 181–82 (citing *Gant*, 556 U.S. at 338). Specifically, 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).

Here, Riley had no control over the contents of his vehicle subsequent to his arrest. Waddell restrained Riley and placed him in the back of a patrol car. He then proceeded to search Riley's vehicle for evidence of drugs without a warrant. Riley was secured 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 Riley's vehicle after his arrest based on Waddell's reasonable belief that he would find evidence of drugs violated article I, section 7 of the Washington State Constitution.

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

We reverse Riley's conviction for possession of a controlled substance and remand for further proceedings.

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.

Van Deren, J.

We concur:

Hunt, J.

Penoyar, J.