STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 10, 2011
V	No. 295647 Washtenaw Circuit Court
JOSHUA ELISHA-DUWANE WHITE, Defendant-Appellant.	LC No. 09-000196-FH

Before: WHITBECK, P.J., and MURRAY and DONOFRIO, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of carrying a concealed weapon, MCL 750.227. He appeals as of right. Because the firearm discovered during the police search of defendant's vehicle was admissible pursuant to the good-faith exception to the exclusionary rule, we affirm.

Defendant argues that, although the police stop of his vehicle was proper, the police exceeded their authority by conducting a search of the vehicle's interior following his arrest. Specifically, defendant contends that because he and his companions were removed from the car and secured before the police searched the vehicle without his consent, the search was improper. This Court summarized the general parameters governing search and seizure issues in *People v Beuschlein*, 245 Mich App 744, 749; 630 NW2d 921 (2001):

> Both the United States and Michigan Constitutions guarantee the right against unreasonable searches and seizures. US Const, Am IV, and Const 1963, art 1, § 11. The lawfulness of a search or seizure depends on its reasonableness. *Illinois v McArthur*, 531 US 326; 121 S Ct 946; 148 L Ed 2d 838 (2001); *People v Snider*, 239 Mich App 393, 406; 608 NW2d 502 (2000). As a general rule, searches conducted without a warrant are per se unreasonable under the Fourth Amendment unless the police conduct falls under one of the established exceptions to the warrant requirement. *People v Borchard-Ruhland*, 460 Mich 278, 293-294; 597 NW2d 1 (1999); *People v Davis*, 442 Mich 1, 10; 497 NW2d 910 (1993); *Snider*, *supra* at 407.

A search incident to a lawful arrest is one of the exceptions. *People v Brzezinski*, 243 Mich App 431, 433; 622 NW2d 528 (2000).

In *Arizona v Gant*, 556 US 332; 129 S Ct 1710, 1719; 173 L Ed 2d 485 (2009), the Supreme Court made clear that the "search incident to arrest" exception to the Fourth Amendment warrant requirement is not a broad exception that allows vehicle searches whenever an individual is arrested in a motor vehicle. Rather, the exception permits police to search a vehicle following an individual's arrest in two situations: (1) "when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search," and (2) "when it is 'reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.'" *Id*., quoting *Thornton v United States*, 541 US 615, 632; 124 S Ct 2127; 158 L Ed 2d 905 (2004) (SCALIA, J., concurring in judgment). Defendant correctly argues that the first situation does not apply because he and his companions were arrested and handcuffed before the police searched his vehicle, and the second situation does not apply because the police could not have supposed that evidence relevant to the crime of arrest—driving while license suspended—would be found in the vehicle. Moreover, this Court has held that *Gant* applies retroactively to cases pending before its release. *People v Short*, 289 Mich App 538, 543-544; 797 NW2d 665 (2010). This is such a case. Accordingly, the search of defendant's vehicle cannot be justified under the search incident to arrest exception to the warrant requirement.

Nevertheless, both the United States Supreme Court and this Court have recently held that where the police acted in good faith based on "the well-established rule" of *New York v Belton*, 453 US 454; 101 S Ct 2860; 69 L Ed 2d 768 (1981), the good-faith exception to the exclusionary rule[1] applies and evidence discovered pursuant to a search incident to arrest should not be suppressed. *Davis v United States*, ___ US ___; 131 S Ct 2419, 2429, 2434; 180 L Ed 2d 285 (2011); *Short*, 289 Mich App at 540, 551-552. The Supreme Court recognized that suppressing evidence in cases where the police acted in reasonable reliance on existing precedent would not effectuate the primary purpose of the exclusionary rule: the deterrence of police misconduct. *Davis*, ___ US ___; 131 S Ct at 2432. The Court stated that "the harsh sanction of exclusion 'should not be applied to deter objectively reasonable law enforcement activity.'" *Id*., ___ US ___; 131 S Ct at 2429, quoting *United States v Leon*, 468 US 897, 919; 104 S Ct 3405; 82 L Ed 2d 677 (1984). This Court in *Short* summarized its reasoning as follows:

> Like the officer in [*United States v*] *Davis*, [598 F3d 1259 (CA 11, 2010)] Trooper Sack did not intentionally violate defendant's rights and he cannot be "held responsible for the unlawfulness of the search he conducted." *Id*. [598 F3d at 1265] As discussed, at the time Trooper Sack conducted the search, our courts adhered to the nearly universally accepted reading of *Belton* that an officer may search a vehicle incident to a lawful arrest. Law enforcement officers are entitled to, and indeed must, rely on court decisions that define appropriate police conduct, and it is illogical to impose "the extreme sanction of exclusion" when a clear rule of conduct is later abrogated by the Supreme Court. *Leon*, 468 US at 916. Accordingly, though the well-settled interpretation of *Belton* was changed by *Gant*, because it was objectively reasonable for Trooper Sack to have relied on that precedent, the good-faith exception to the exclusionary rule applies and the

[1] See *United States v Leon*, 468 US 897; 104 S Ct 3405; 82 L Ed 2d 677 (1984).

trial court correctly denied defendant's motion to suppress. [*Short*, 289 Mich App at 551-552.]

This Court's decision in *Short* and the United States Supreme Court's decision in *Davis* govern the outcome of this appeal. Because *Belton* authorized the search of defendant's vehicle at the time that it was conducted, the firearm discovered during the search was admissible pursuant to the good-faith exception to the exclusionary rule. Accordingly, the trial court properly denied defendant's motion to suppress.

Affirmed.

/s/ William C. Whitbeck
/s/ Christopher M. Murray
/s/ Pat M. Donofrio