

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 62839-9-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	
WILLIAM LOREN FIFE, aka	)	
LAWRENCE ANDERSON; WILLIAM	)	
ANDERSON; BILLY RAY LAWRENCE	)	
FERDOM; WILLIAM LOREN FERDON;	)	UNPUBLISHED OPINION
LOREN FIFE; WILLIAM FIFE;	)	
ANDERSON LAWRENCE; WILLIAM	)	FILED: July 19, 2010
LAWRENCE,	)	)
	)	
Appellant.	)	
_____	)	

Becker, J. – William Fife appeals his convictions on seven counts of possession of controlled substances. The convictions were based upon contraband found when his vehicle was searched incident to arrest on an outstanding warrant. Because Fife was arrested for a crime of which no evidence might reasonably be found in the car, and because he was handcuffed and secured in a patrol car at the time of the search, the search of his vehicle was unlawful. We reverse.

According to findings of fact entered by the trial court after a hearing on

Fife's motion to suppress, the Whatcom County Sheriff's Office received a tip on August 2, 2008, that Fife was wanted on an outstanding warrant and was driving a turquoise Ford Probe with a suspended license. Deputy Brent Wagenaar spotted Fife driving and stopped him to investigate the warrant and suspended license. Deputy Courtney Polinder joined Wagenaar, and they arrested Fife for the outstanding felony warrant and for driving with a suspended license. They searched the vehicle incident to arrest and found the drugs that served as the basis for the prosecution.

The State charged Fife with seven counts of unlawful possession of a controlled substance, one count for each of seven different substances found in the search. The substances included five prescription drugs, cocaine, and heroin. The State alleged Fife possessed the pharmaceuticals in the form of the various pills found in the car, the cocaine in the form of a spot of brown residue on some scales, and the heroin when he consumed it earlier in the day, as well as in the form of residue on the scales and in a vial.

The court, concluding that the arrest was lawful and that the search incident to arrest was valid, denied the motion to suppress. A jury convicted Fife as charged.

On appeal, Fife contends that the search of his vehicle incident to his arrest on an outstanding warrant and for driving with a suspended license was unconstitutional under Arizona v. Gant, \_\_\_ U.S. \_\_\_, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009), and article I, section 7 of the Washington Constitution. In Gant,

the Supreme Court held that a warrantless search of a vehicle incident to a recent occupant's arrest is not permitted as a general rule; but it will still be allowed when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search, or if it is reasonable to believe the vehicle contains evidence of the offense of arrest. In addition, police may search the passenger compartment if there is a danger that any individual might access the vehicle to get immediate control of weapons. Finally, the existence of "probable cause to believe a vehicle contains evidence of criminal activity" provides authority to search any area of the vehicle in which the evidence might be found. Gant, 129 S. Ct. at 1721.

The State concedes that Gant applies retroactively to Fife's case, but maintains that the conviction should be affirmed because the circumstances of the arrest supplied a basis for a reasonable belief that evidence of criminal activity would be found in the vehicle. The State cites testimony in the record of the suppression hearing that Deputy Polinder told Fife the vehicle was going to be searched and asked him if there was anything illegal in the vehicle. Fife responded that he was borrowing the car, it belonged to someone else, and that there were needles and probably pills in it. Deputy Polinder opined that Fife appeared to be high on some drug, and when he asked Fife about this, Fife said he had injected heroin earlier that day. Also, the deputies found \$1,265 in Fife's wallet. And they found a variety of needles, syringes, pills, scales, and other drug paraphernalia during their search of the vehicle. The State asserts it is

likely that at least some of these items were in open view from outside the car.

It is debatable whether all the evidence cited by the State could have been considered and, if so, whether it would establish probable cause to believe the vehicle contained evidence of criminal activity other than the crimes for which Fife was arrested, and thereby bring the case within what is permitted by Gant. For one thing, because Gant had not yet been decided, the State's present assertions about the evidence satisfying Gant were not truly tested and proved at the suppression hearing and there are no findings of fact with respect to them. Possibly, this problem could be addressed by remanding for an evidentiary hearing where the trial court could consider Gant. But even if the conviction could be affirmed under Gant, Fife has also based his appeal on state constitutional grounds. The Washington Supreme Court has interpreted article I, section 7 of the Washington Constitution as forbidding the search of a vehicle incident to the arrest of a recent occupant "absent a reasonable basis to believe that the arrestee poses a safety risk or that the vehicle contains evidence of the crime of arrest that could be concealed or destroyed, and that these concerns exist at the time of the search." State v. Patton, 167 Wn.2d 379, 394-95, 219 P.3d 651 (2009). Patton stops short of saying that warrantless searches are authorized where there is probable cause to believe the vehicle contains evidence of criminal activity other than the crime of arrest.

As in Patton, the record does not establish a reasonable basis to believe that Fife's vehicle contained evidence of the crime of arrest. We therefore

conclude the search was unlawful and the fruits of the search inadmissible. The remaining evidence is insufficient to support the convictions.<sup>1</sup>

The State seeks to avoid reversal under the doctrines of inevitable discovery and good faith. But inevitable discovery is not a viable doctrine in Washington under State v. Winterstein, 167 Wn.2d 620, 636, 220 P.3d 1226 (2009). And the good faith exception does not apply under article I, section 7. State v. Afana, No. 82600-5 (Wash. July 1, 2010).

Reversed and remanded for dismissal with prejudice.

Becker, J.

WE CONCUR:

Appelwick, J.

Edmonton, J.

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<sup>1</sup> Fife's statement outside the vehicle that he had injected heroin earlier in the day is insufficient to support a conviction for possession of heroin. State v. Hutton, 7 Wn. App. 726, 728-32, 502 P.2d 1037 (1972).