

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 12, 2010

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2009AP2536-CR

Cir. Ct. No. 2009CM1089

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

v.

PAUL A. REYNOLDS,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
WILLIAM E. HANRAHAN, Judge. *Reversed.*

¶1 LUNDSTEN, J.¹ The State appeals the circuit court's order granting Paul A. Reynolds' motion to suppress evidence that was obtained during

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

a search of his vehicle incident to his arrest. After the circuit court ruled and the parties briefed the suppression issue in this appeal, the Wisconsin Supreme Court decided *State v. Dearborn*, 2010 WI 84, No. 2007AP1894-CR. *Dearborn* controls and dictates reversal here.

¶2 On April 19, 2009, a police officer stopped Reynolds in his truck and arrested him for driving while under the influence of an intoxicant. The officer placed Reynolds in his patrol car and then searched Reynolds' truck as a search incident to the arrest. Before the circuit court, Reynolds argued that *Arizona v. Gant*, 556 U.S. ___, 129 S. Ct. 1710 (2009), required suppression of the evidence discovered in that search, and the circuit court agreed. The State asked the circuit court to apply the good faith exception. The circuit court suppressed the evidence and the State appealed.

¶3 It is undisputed that, under *Gant*, the search in this case was unlawful. *See id.* at 1723 (“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.”). Thus, the normal remedy is suppression. The remaining dispute briefed by the parties is whether the good faith exception to the exclusionary rule applies here where the search was executed before *Gant* was decided. Reynolds contends that the good faith exception should not apply generally and, even if it might be applied, I should decline to do so because pre-*Gant* law was unsettled and, therefore, could not reasonably be relied on by the officer.

¶4 Reynolds’ arguments were squarely addressed and rejected in *Dearborn*. The operative facts in *Dearborn* are the same as those here: a police

officer arrested a suspect, placed him securely away from his vehicle, and then searched the suspect's vehicle as a search incident to arrest, and this occurred before *Gant* was decided by the United States Supreme Court. *Dearborn*, 2010 WI 84, ¶¶8, 28-29. In accepting the same good faith argument made by the State here, the *Dearborn* court stated:

Prior to the United States Supreme Court's decision in *Gant*, this court made clear in *State v. Fry* and its progeny that the type of search conducted of Dearborn's truck following his arrest was lawful. However, we now accept *Gant*'s interpretation of the United States Constitution and adopt its holding as the proper interpretation of the Wisconsin Constitution's protection against unreasonable searches and seizures. Thus, the search of Dearborn's truck violated his constitutional rights.

However, we decline to apply the remedy of exclusion for the constitutional violation. We hold that the good faith exception precludes application of the exclusionary rule where officers conduct a search in objectively reasonable reliance upon clear and settled Wisconsin precedent that is later deemed unconstitutional by the United States Supreme Court.

Id., ¶¶50-51.

¶5 Because *Dearborn* controls, I reverse the order of the circuit court granting Reynolds' motion to suppress.

By the Court.—Order reversed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)4.

