

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI

Appellant

v.

DUSTIN TOM KINGSLEY

Respondent

DOCKET NUMBER **WD71799**

DATE: August 24, 2010

Appeal From:

Circuit Court of Henry County, MO
The Honorable James Kelso Journey, Judge

Appellate Judges:

Division Four: Thomas H. Newton, P.J., James Edward Welsh, and Alok Ahuja, JJ.

Attorneys:

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Co-Counsel for Appellant

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Counsel for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI, Appellant, v.
DUSTIN TOM KINGSLEY, Respondent

WD71799

Henry County

Before Division Four Judges: Thomas Newton, P.J., James Welsh and Alok Ahuja, JJ.

Dustin Tom Kingsley was pulled over for speeding. He was arrested, handcuffed, and placed into the police officer's patrol car after the officer determined Kingsley's license was revoked. Another officer arrived on the scene. He asked Kingsley's passenger to step to the back of the car and then searched the vehicle. Methamphetamine and drug paraphernalia were found in the passenger compartment. Kingsley was charged with possession of a controlled substance. He moved to suppress the evidence obtained in the search based on the United States Supreme Court's recent decision in *Arizona v. Gant*, 129 S. Ct. 1710 (2009). The trial court granted the motion, and the State appeals.

AFFIRMED.

Division Four Holds:

The State argues that the trial court erred in granting Mr. Kingsley's motion to suppress because the search of the vehicle was conducted in good faith according to controlling case law at the time of the arrest. Prior to *Gant*, most appellate courts read *New York v. Belton*, as permitting police to perform a warrantless search of a vehicle incident to arrest, even if the arrestee was within police custody and not within reaching distance of the vehicle. The officers who arrested Kingsley testified that they were trained in accord with this interpretation. In *Gant*, the Supreme Court rejected this reading of *Belton*, holding that officers may perform a warrantless search of a vehicle incident to arrest only if the occupant is within reaching distance of the passenger compartment, the officers reasonably believe evidence of the offense of arrest is within the vehicle, or another exception to the warrant requirement applies. Under rules promulgated by the Supreme Court in *United States v. Johnson* and *Griffith v. Kentucky*, decisions of the Supreme Court construing the Fourth Amendment must be applied to defendants whose cases are not yet final at the time the rule is pronounced. Consequently, the search of Kingsley's vehicle violated the Fourth Amendment.

Evidence that was unconstitutionally obtained is not necessarily excluded from admission at trial. The Supreme Court has held, for example, that evidence obtained through police officer good-faith reliance on an invalid warrant could be admissible because exclusion did not serve to deter officers' culpable conduct. However, this good-faith exception has never been extended to an officer's reliance on appellate case law.

This court recently addressed these issues in a substantially similar case: *State v. Johnson*, No. WD70167, 2010 WL 2730593 (Mo. App. W.D. July 13, 2010). A majority in *Johnson* rejected extending the good-faith exception to case law. It reasoned that an officer's reliance on an invalid warrant is significantly different from an officer's reliance on case law that is subsequently overruled, that to extend the exception would conflict with *United States v.*

Johnson and *Griffith*, create a conflict with the case or controversy requirement, and would violate the integrity of constitutional adjudication by treating similarly-situated defendants differently and that this latter concern outweighed burdens on the administration of justice.

In accord with the *Johnson* majority, we hold the good-faith exception to the exclusionary rule should not be applied where an officer has relied on appellate case law to perform a constitutionally impermissible search.

Therefore, we affirm.

Opinion by: Thomas H. Newton, Judge

August 24, 2010

Judge James Edward Welsh concurs.

Concurring opinion by Judge Alok Ahuja:

The author concurs in the result, concluding that the Division is bound to follow the Court's 2-1 decision in *State v. Johnson*, No. WD70167, 2010 WL 2730593 (Mo. App. W.D. July 13, 2010). If presented as an initial matter, however, Judge Ahuja would agree with the dissenting opinion in *Johnson*, and hold that the exclusionary rule cannot apply here, because the officers who searched *Kingsley's* vehicle acted in an objectively reasonable manner.

While there may be tension between the reasoning of the United States Supreme Court's decisions addressing retroactivity issues, and its decisions concerning application of the exclusionary rule, only the exclusionary rule caselaw is directly relevant here. This is not a retroactivity case, since both parties concede that *Arizona v. Gant*, 129 S. Ct. 1710 (2009), applies to determine the validity of the search of *Kingsley's* vehicle (even though that search occurred before *Gant* was decided). The issue here is not the retroactive application of *Gant*, but instead the *remedy* for a search which was unlawful under *Gant*. As to the remedy issue, the Supreme Court's exclusionary rule decisions compel the conclusion that exclusion of evidence is unwarranted here, because there was nothing objectively unreasonable in the officers' belief that their search of *Kingsley's* vehicle was lawful.

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