

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI,**

**Appellant,**

**v.**

**HEATHER SUE KINGSLEY,**

**Respondent.**

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**DOCKET NUMBER WD71800**

**Date: November 9, 2010**

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Appeal from:  
Henry County Circuit Court  
The Honorable James K. Journey, Judge

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Appellate Judges:  
Division One: Karen King Mitchell, Presiding Judge,  
Lisa White Hardwick, Chief Judge, and Cynthia L. Martin, Judge

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Attorneys:  
Sarah E. Duncan, Esq., Clinton, MO for respondent.  
Richard M. Shields, Esq., Clinton, MO and Terrence M. Messonnier, Esq., Jefferson  
City, MO, for appellant.

**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**COURT OF APPEALS -- WESTERN DISTRICT**

STATE OF MISSOURI

**Appellant,**

v.

HEATHER SUE KINGSLEY,

**Respondent.**

WD71800

Henry County

Before Division One Judges: Karen King Mitchell, Presiding Judge,  
Lisa White Hardwick, Chief Judge, and Cynthia L. Martin, Judge

In this interlocutory appeal, the State contends the circuit court erred in suppressing drug-related evidence obtained during a warrantless search of a vehicle in which the defendant, Heather Kingsley, was a passenger. The circuit court suppressed the evidence based on the United States Supreme Court's recent decision in *Arizona v. Gant*, 129 S. Ct. 1710 (2009). The State argues the evidence should not have been suppressed because: (1) the officers acted in good faith by relying on then well-settled case law regarding a search incident to arrest; and (2) Kingsley lacked standing to challenge the search as a passenger in the vehicle.

**AFFIRMED.**

**Division One holds:** (1) Based on recent precedent in the Western District, the *Gant* decision must be retroactively applied to this case and the good faith exception cannot be applied to otherwise permit admission of the evidence; and (2) the State failed to object to Kingsley's standing during the suppression hearing and, therefore, the issue is not preserved for appellate review. The suppression order is affirmed.

**Opinion by: Lisa White Hardwick, Chief Judge**

**November 9, 2010**

**Concurring opinion by Karen King Mitchell, Presiding Judge November 9, 2010**

**Concurring Opinion holds:**

I concur in affirmance of the trial court's order granting Kingsley's motion to suppress, because we are bound to reach this result following *State v. Johnson*, No. WD70167, 2010 WL 2730593 (Mo. App. W.D. July 13, 2010) and *State v. Kingsley*, No. WD71799, 2010 WL 3303684 (Mo. App. W.D. August 24, 2010) (*Kingsley I*). Because neither *Johnson* nor *Kingsley I* is final at this time, I write separately to reiterate that but for the majority opinions in those two cases I would hold, as I did in the dissenting opinion in *Johnson*, that the exclusionary rule cannot be applied here because the officers who searched the vehicle in which Kingsley was riding acted in an objectively reasonable manner.

**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**