

No. SC91214

In the
Supreme Court of Missouri

STATE OF MISSOURI,

Appellant,

v.

DUSTIN TOM KINGSLEY,

Respondent.

Appeal from Henry County Circuit Court
Twenty-seventh Judicial Circuit
The Honorable James Kelso Journey, Judge

APPELLANT'S SUBSTITUTE BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES..... 2

JURISDICTIONAL STATEMENT 4

STATEMENT OF FACTS 5

POINT OF ERROR 8

 Point I (Good Faith Reliance on Established Case Law) 8

ARGUMENT..... 9

 Point I (Good Faith Reliance on Established Case Law) 9

CONCLUSION 15

CERTIFICATE OF COMPLIANCE 16

APPENDIX 17

TABLE OF AUTHORITIES

Cases

<i>Arizona v. Gant</i> , 129 S. Ct. 1710 (2008).....	passim
<i>Davis v. United States</i> , 131 S. Ct. 2419 (2011).....	passim
<i>Davis v. United States</i> , 131 S. Ct. 502 (2010).....	10
<i>Knowles v. Iowa</i> , 525 U.S. 113, 119 S. Ct. 484 (1998).....	13
<i>New York v. Belton</i> , 453 U.S. 454, 101 S. Ct. 2860 (1980)	passim
<i>State v. Darrington</i> , 896 S.W.2d 27 (Mo. App. W.D. 1995)	14
<i>State v. Harvey</i> , 648 S.W.2d 87 (Mo. banc 1983).....	8, 14
<i>State v. Lybarger</i> , 165 S.W.3d 180 (Mo. App. W.D. 2005).....	9
<i>State v. Oliver</i> , 293 S.W.3d 437 (Mo. banc 2009)	9
<i>State v. Reed</i> , 157 S.W.3d 353 (Mo. App. W.D. 2005)	8, 13, 14
<i>State v. Remrey</i> , 824 S.W.2d 106 (Mo. App. E.D. 1992).....	14
<i>State v. Rushing</i> , 935 S.W.2d 30 (Mo. banc 1996)	9
<i>State v. Scott</i> , 200 S.W.3d 41 (Mo. App. E.D. banc 2006)	13
<i>State v. Taylor</i> , 216 W.3d 187 (Mo. App. E.D. 2007)	13
<i>United States v. Hrasky</i> , 453 F.3d 1099 (8 th Cir. 2006)	13
<i>United States v. Orozco-Castillo</i> , 404 F.3d 1101 (8 th Cir. 2005).....	8, 12, 13
<i>United States v. Searcy</i> , 181 F. 3d 975 (8 th Cir. 1999).....	13

Constitutional Provisions

Missouri Constitution, Article I, Section 15..... 9
Missouri Constitution, Article V, Section 10 4
United States Constitution, Fourth Amendment 9

Rules

Missouri Rules of Court, Rule 83.04..... 4

JURISDICTIONAL STATEMENT

On December 1, 2009, an order was entered in the Circuit Court of Henry County, Missouri, sustaining Respondent's motion to suppress evidence. L.F. 7.¹ Respondent, Dustin Kingsley, had been charged with possession of a controlled substance. Supp. L.F. 3, 6.

After an opinion by the Missouri Court of Appeals, Western District, this Court granted Appellant's Application for Transfer. Missouri Constitution, Article V, Section 10; Rule 83.04.

¹ References to the record shall be abbreviated as follows in this brief: "L.F." for references to the Legal File, "Supp. L.F." for references to the Supplemental Legal File and "Tr." for references to the Transcript.

STATEMENT OF FACTS

On December 1, 2007, Officer Dan Guynn of the Clinton Police Department observed a maroon car operating on Highway 7 in excess of the posted speed limit. Tr. 9-11. Officer Guynn's radar unit revealed that the motor vehicle was operating at 67 miles per hour on a road which had a posted speed limit of 45 miles per hour. Tr. 11-12. Officer Guynn activated his emergency lights, and the car pulled into a motel parking lot and stopped approximately one-half mile later. Tr. 12-14. There was an adequate shoulder on Highway 7 for the car to have stopped earlier. Tr. 13.

When Officer Guynn approached the car, Respondent was in the driver seat and Heather Kingsley was in the passenger seat. Tr. 14. Officer Guynn asked Respondent for his driver's license, and Respondent replied that he did not have a driver's license. Tr. 14-15. A short time later, Respondent told Officer Guynn that his driver's license was revoked. Tr. 15. Officer Guynn observed that Respondent appeared to be nervous, and that he was more nervous than most people that have been stopped by the police. Tr. 16.

Officer Guynn contacted dispatch to confirm the status of Respondent's license. Tr. 17. Dispatch confirmed that the license was revoked. Tr. 17. At that time, Officer Guynn placed Respondent under arrest. Tr. 17.

While talking with Respondent and Ms. Kingsley, Officer Guynn learned that Respondent and Ms. Kingsley had been in custody in Buchanan County on charges related to methamphetamine and had previously missed court on those charges.² Tr. 28.

At around the time that Officer Guynn was arresting Respondent, Officer David Akers arrived to assist Officer Guynn. Tr. 17-18, 41. Officer Guynn told Officer Akers that Respondent was under arrest and requested that Officer Akers search the car incident to that arrest.³ Tr. 18, 41. Both Officer Guynn and Officer Akers had been trained under the rule, first established by *New York v. Belton*, 453 U.S. 454, 101 S. Ct. 2860 (1980), that an officer could search the passenger compartment of a motor vehicle incident to the arrest of a recent occupant of that vehicle. Tr. 8-9, 39-40.

At the time that Officer Akers approached the car to search it, Ms. Kingsley was still in the car. Tr. 42. Officer Akers had Ms. Kingsley step out of the car and wait by the back of the car. Tr. 42. Officer Akers then searched the vehicle and found a sock containing an eye glass case. Tr. 42. Inside the eye glass case, Officer Akers found a spoon, a syringe, and some small bags which contained a white powdery substance. Tr.

² It was unclear whether Officer Guynn learned about the Buchanan County charge prior to or after the search had begun. Tr. 28-29.

³ In his testimony, Officer Guynn suggested that there could be potential evidence related to the driving while revoked charge such as prior traffic tickets or letters from the Department of Revenue to Respondent regarding his suspension. Tr. 30.

42. Officer Akers notified Officer Guynn about what had been found in the search, and then Officer Akers placed Ms. Kingsley under arrest. Tr. 42.

A complaint was filed alleging that Respondent committed the offense of possession of a controlled substance. L.F.2-3. Subsequently, an information was filed formally charging Respondent with that offense. Supp. L.F. 3, 6.

Respondent then filed a motion to suppress the evidence found in the search based on the decision in *Arizona v. Gant*, 129 S. Ct. 1710 (2008). L.F. 4-5. In the prosecutor's argument to the trial court on this motion, the prosecutor suggested that, notwithstanding the decision in *Gant* indicating that there would not be a reason to suspect evidence being concealed on a driving while revoked offense, there could be evidence such as paperwork, and, thus, that the factual assumption in *Gant* was erroneous. Tr. 63-65. The prosecutor also argued that, since such searches were permissible prior to the decision in *Gant*, a good faith exception to the exclusionary rule should apply to searches conducted prior to the *Gant* decision. Tr. 58-63. Lastly, the prosecutor argued that there was a valid inventory conducted in this case, and, as such, that the inevitable discovery doctrine applied. Tr. 65.

The trial court took the matter under advisement and subsequently issued its decision finding that the search in this case was prohibited by *Gant*. L.F. 7, Tr. 72.

POINT OF ERROR

Point I (Good Faith Reliance on Established Case Law)

The trial court erred in granting the motion to suppress because the search in this case falls within the good faith exception to the exclusionary rule in that the search was conducted incident to arrest prior to the decision of the United States Supreme Court in *Arizona v. Gant*, and a search of the passenger compartment of an automobile incident to arrest was authorized by the established case law of the State of Missouri, as it existed on the date of the search.

Davis v. United States, 131 S. Ct. 2419 (2011)

State v. Harvey, 648 S.W.2d 87 (Mo. banc 1983)

State v. Reed, 157 S.W.3d 353 (Mo. App. W.D. 2005)

United States v. Orozco-Castillo, 404 F.3d 1101 (8th Cir. 2005)

ARGUMENT

Point I (Good Faith Reliance on Established Case Law)

The trial court erred in granting the motion to suppress because the search in this case falls within the good faith exception to the exclusionary rule in that the search was conducted incident to arrest prior to the decision of the United States Supreme Court in *Arizona v. Gant*, and a search of the passenger compartment of an automobile incident to arrest was authorized by the established case law of the State of Missouri, as it existed on the date of the search.

In this case, there was no dispute over the relevant facts. As the issue raised is an issue of law, it is reviewed de novo with appropriate deference to the factual findings of the trial court which are viewed in a light consistent with those findings. *State v. Lybarger*, 165 S.W.3d 180, 184 (Mo. App. W.D. 2005).

The motion to suppress in this case cited to both the Missouri Constitution and the United States Constitution. L.F. 4-5. This Court has previously addressed the relationship between the Fourth Amendment of the United States Constitution and Article I, Section 15 of the Missouri Constitution. In *State v. Rushing*, 935 S.W.2d 30 (Mo. banc 1996), this Court stated that the language of Article I, Section 15 parallels the language of the Fourth Amendment and that the protections of the two provisions should be viewed as coextensive. 935 S.W.2d at 33-34. In *State v. Oliver*, 293 S.W.3d 437 (Mo. banc 2009), this Court stated “the same analysis applies to cases under the Missouri Constitution as under the United States Constitution.” *Id.* at 442.

As the protections of the Missouri Constitution and the United States Constitution are the same, the issue becomes whether suppression is warranted under the United States Constitution. In the trial court, the State argued that suppression was not warranted as the evidence was collected in good faith in reliance upon the established case law at the time of the search. Tr. 57-63. Respondent countered the argument by suggesting that a good faith exception should not apply when the established case law in a jurisdiction was based on a misinterpretation of a decision of the United States Supreme Court which was later found to be invalid by the United States Supreme Court. Tr. 67-72. The trial court reached the legal conclusion that this case was controlled by *Gant*.

While the appeal on this case was pending, the United States Supreme Court granted certiorari in *Davis v. United States*, to determine whether the good faith exception to the exclusionary rule covered reliance on the established case law in the jurisdiction. *Davis v. United States*, 131 S. Ct. 502 (2010). This Court stayed briefing while *Davis* was pending in the United States Supreme Court.

The United States Supreme Court issued its opinion on June 16, 2011. *Davis v. United States*, 131 S. Ct. 2419 (2011). In *Davis*, the United States Supreme Court found that the logic which governed the good faith exception for reliance on invalid warrants and invalid statutes applied to reliance on invalid appellate decisions. *Id.* at 2428-29. As the United States Supreme Court stated, “[r]esponsible law-enforcement officers will take care to learn what is required of them under Fourth Amendment precedent and will conform their conduct to the rules. But by the same token, when binding appellate precedent specifically *authorizes* a particular police practice, well-trained officers will

and should use that tool to fulfill their crime-detection and public-safety responsibilities.” *Id.* at 2429 (citations omitted, emphasis in original). The United States Supreme Court also noted that, in conducting a search in accordance with binding appellate precedent, an officer is acting “as a reasonable officer would and should act.” *Id.* Because such actions do not demonstrate police misconduct that needs to be deterred, the United States Supreme Court held that “[e]vidence obtained in a search conducted in reasonable reliance based on established binding precedent is not subject to the exclusionary rule.” *Id.*

In *Davis*, the United States Supreme Court did not expressly define what qualifies as “established binding precedent.” However, some guidance can be taken from the reasoning in *Davis*. In *Davis*, the United States Supreme Court described the state of the law prior to the decision in *Gant*. According to the United States Supreme Court, the consensus of most jurisdictions prior to *Gant* was that the holding in *New York v. Belton*, 453 U.S. 454, 101 S. Ct. 2860 (1981), authorized the police to search the passenger compartment incident to the lawful arrest of a recent occupant of the vehicle.⁴ Looking at the particular facts of *Davis*, the United States Supreme Court noted that the defendant was charged in the United States District Court for the Middle District of Alabama for an offense that occurred in 2007. The United States Supreme Court found that the established precedent of the United States Court of Appeals for the Eleventh Circuit

⁴ A similar summary of the state of the law prior to *Gant* is found in *Gant*. 129 S. Ct. at 1718-19,

interpreted *Belton* as permitting the type of search conducted incident to arrest in *Davis*. 131 S. Ct. at 2426. The United States Supreme Court found that the case law of an intermediate federal court qualified as the type of binding precedent that would permit law enforcement to rely on the good faith exception. *Id.* at 2428-29, 2434.

Based on *Davis*, it is clear that the controlling precedent of the federal Circuit with jurisdiction over a state qualifies as binding precedent (at least for federal cases). By the same logic, however, the precedent of a state's own appellate courts should receive equivalent treatment for a state case.⁵ An examination of the precedent of the Eighth Circuit and of Missouri courts show that, prior to *Gant*, both the federal courts and the state courts with jurisdiction over crimes committed in Missouri had a similar reading of the rule governing searches incident to arrest.

In *United States v. Orozco-Castillo*, 404 F.3d 1101 (8th Cir. 2005), the Eighth Circuit considered the search of the passenger compartment of the vehicle incident to the arrest of the driver for careless driving. *Id.* at 1102. Even though the arrest was for minor traffic violations, the Eighth Circuit found that the search was authorized incident to arrest based on its reading of the decision in *Belton* and *Knowles v. Iowa*, 525 U.S.

⁵ As discussed further below, the precedent of the Eighth Circuit, this Court, and the Missouri Court of Appeals reach the same conclusion. Thus, it is not necessary for this Court to address the hypothetical of a conflict between the federal courts and the state courts in a particular jurisdiction.

113, 119 S. Ct. 484 (1998). 404 F.3d at 1103; *see also United States v. Searcy*, 181 F. 3d 975, 979 (8th Cir. 1999).

Similarly, in *United States v. Hrasky*, 453 F.3d 1099 (8th Cir. 2006), the Eighth Circuit found that a search of the passenger compartment of a vehicle incident to an arrest of the driver for driving while suspended was authorized under *Belton*. In upholding that search, the Eighth Circuit described *Belton* as a “bright-line rule” establishing that “when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile.” 453 F.3d at 1100. The Eighth Circuit further described *Belton* as eliminating the need to litigate in each case whether there were additional reasons beyond the arrest to support the search including what items may have been accessible to the individuals in the automobile. 453 F.3d at 1101.

Missouri case law also found that a search of the passenger compartment incident to an arrest was an authorized search even if the arrest was for a traffic offense like driving while revoked. In *State v. Scott*, 200 S.W.3d 41 (Mo. App. E.D. banc 2006), a plurality opinion of the Eastern District, sitting en banc, held that such a search was valid.⁶ *Id.* at 43-44; *see also State v. Taylor*, 216 W.3d 187 (Mo. App. E.D. 2007). A similar conclusion was reached in *State v. Reed*, 157 S.W.3d 353 (Mo. App. W.D. 2005),

⁶ The opinion was for six of the thirteen judges of the Court of Appeals. One of the three judges who concurred in result only questioned a different part of the opinion. 200 S.W.3d at 46.

by the Western District. *Id.* at 357-59; *see also State v. Darrington*, 896 S.W.2d 27 (Mo. App. W.D. 1995); *State v. Remrey*, 824 S.W.2d 106 (Mo. App. E.D. 1992).

This Court has previously adopted a broad reading of *Belton* similar to the interpretation struck down in *Gant*. In *State v. Harvey*, 648 S.W.2d 87 (Mo. banc 1983), this Court rejected an argument for a narrow reading of *Belton*. *Id.* at 88-89.

Based on these opinions, the established binding precedent in Missouri on December 1, 2007, was that a search incident to arrest was permissible even if the offense of arrest was a traffic offense or driving while revoked. Both officers involved in this case had been trained as to this legal principle. Tr. 8-9, 39-40. As in *Davis*, the officers in this case acted reasonably in reliance upon the established law in Missouri.

As the United States Supreme Court emphasized in *Davis*, a real deterrent value is a necessary condition before evidence should be excluded in light of the societal cost of excluding relevant evidence. 131 S. Ct. at 2426-27. In this case, there was no “reckless disregard” of Respondent’s rights, but rather a good-faith belief that the search was permissible in light of Missouri law on this issue. *Cf. Davis*, 131 S. Ct. at 2427-28.

The ruling of the trial court in this case was based solely on the belief that, as the search was impermissible under *Gant*, the motion to suppress had to be granted, notwithstanding the claim of good faith. L.F. 7. In light of the decision in *Davis*, that conclusion is clearly erroneous.

Point I should be granted.

CONCLUSION

The judgment of the trial court should be reversed, and this case should be remanded for trial.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify:

1. That the attached brief complies with the limitations contained in Missouri Supreme Court Rule 84.06 and contains 3,212 words, excluding the cover, certification and appendix, as determined by Microsoft Word software; and
2. That the floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses and is virus-free; and
3. That a true and correct copy of the attached brief, and a floppy disk containing a copy of this brief, were mailed this 12th day of July, 2011, to:

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APPENDIX

Docket Entry Judgment on Motion to Suppress A1
Davis v. United States, 131 S. Ct. 2419 (2011) A2