

Summary of SC91173, *State of Missouri v. Howard D. Johnson*

Appeal from the Daviess County circuit court, Judge Warren L. McElwain

Consolidated with SC91182, *State of Missouri v. Andrea M. Hicks*,

Appeal from the Howell County circuit court, Judge David P. Evans

Consolidated with SC91214, *State of Missouri v. Dustin Tom Kingsley*

Appeal from the Henry County circuit court, Judge James Kelso Journey

Consolidated with SC91429, *State of Missouri v. Heather Sue Kingsley*

Appeal from the Henry County circuit court, Judge James Kelso Journey

All argued separately and submitted October 6, 2011; consolidated opinion issued Dec. 6, 2011

Attorneys: In SC91173, Johnson was represented by Ellen H. Flottman and Alexa I. Pearson of the public defender's office in Columbia, (573) 882-9855, and the state was represented by Daniel N. McPherson of the attorney general's office in Jefferson City, (573) 751-3321.

In SC91182, the state was represented by Joshua N. Corman of the Howell County prosecutor's office, (417) 256-2317, and Hicks was represented by Matthew M. Ward of the public defender's office in Columbia, (573) 882-9855.

In both SC91214 and SC91429, the state was represented by Terrence M. Messonnier of the attorney general's office in Jefferson City, (573) 751-3321, and the Kingsleys were represented by Sarah Duncan of Johns, Mitchell & Duncan LLC in Clinton, (660) 885-6161.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: Four appeals consolidated after argument involve whether a trial court may admit evidence obtained in a search of a motor vehicle, incident to a traffic arrest but after the defendant is secured, when there is no reason to believe that evidence of the crime for which the defendant was arrested was present in the vehicle. Each search was conducted in compliance with the case law that was binding at the time. In a 7-0 decision written by Judge Mary R. Russell, the Supreme Court of Missouri affirms the judgment in *Johnson* overruling a motion to suppress evidence and reverses and remands (sends back) the judgments in *Hicks*, *D. Kingsley* and *H. Kingsley* sustaining motions to suppress. In light of a recent United States Supreme Court decision, when an officer conducts a search incident to arrest in "objectively reasonable reliance" on binding appellate precedent that later is overturned, the exclusionary rule does not mandate suppression of the evidence obtained as a result of that search.

Judge Thea A. Sherry, a circuit judge in the 21st Judicial Circuit (St. Louis County), sat in this case by special designation to fill a then-vacancy on the Court (from before the appointment of Judge George W. Draper III).

Facts: Each of these four cases, consolidated after argument for purposes of this opinion, involves whether a trial court may admit evidence obtained in a search of a motor vehicle, incident to a traffic arrest but after the defendant is secured, when there is no reason to believe that evidence of the crime for which the defendant was arrested was present in the vehicle. Each

search was conducted in compliance with the case law that was binding at the time. While the four cases were pending, however, the United States Supreme Court held that such searches were unlawful. Relying on that decision, each defendant moved to suppress the evidence obtained from these searches. As to the specifics of each:

Howard Johnson was arrested for driving without a valid license. Incident to his arrest, a trooper searched Johnson's vehicle while Johnson sat in the patrol car and found cocaine and paraphernalia for smoking crack cocaine. The court overruled his motion to suppress; Johnson appeals.

Andrea Hicks was arrested for driving while her license was suspended. She was handcuffed and placed on the curb while an officer searched her vehicle, finding a syringe containing methamphetamine. The court sustained her motion to suppress; the state appeals.

An officer stopped a vehicle driven by Dustin Kingsley and with Heather Kingsley in the passenger seat. After the officer confirmed Dustin was driving with a revoked license, he handcuffed Dustin and placed him in the patrol car. Another officer instructed Heather to wait by the back of the car while the officer searched the car incident to Dustin's arrest. During the search, the officer found drugs and drug paraphernalia. He subsequently arrested Heather. At their trials, both Kingsleys filed motions to suppress the evidence obtained during the search. The court sustained their motions; the state appeals.

SC91173, *Howard D. Johnson*: AFFIRMED. SC91182, *Andrea M. Hicks*; SC91214, *Dustin Tom Kingsley*; and SC91429, *Heather Sue Kingsley*: REVERSED AND REMANDED.

Court en banc holds: It is a question of law whether the searches in these cases were permissible and whether the exclusionary rule applies to the evidence seized as a result of those searches. The protections of article I, section 15 of the Missouri Constitution are coextensive with the protections guaranteed by the Fourth Amendment to the United States Constitution because both provisions provide the same guarantees against unreasonable searches and seizures. In *New York v. Belton*, 453 U.S. 454, 460 (1981), the Supreme Court held that an officer making a lawful custodial arrest of a vehicle's occupant may conduct, incident to that arrest, a warrantless search of the vehicle's passenger compartment. This Court followed suit with *State v. Harvey*, 648 S.W.2d 87, 89-90 (Mo. banc 1983) (allowing a vehicle search incident to the arrest of a recent occupant even if there is no possibility the arrestee could access the vehicle at the time of the search).

After the individuals in the four cases below were arrested, the United States Supreme Court revisited the *Belton* exception to the warrant requirement. In *Arizona v. Gant*, 556 U.S. 332 (2008), the Supreme Court rejected a common interpretation of *Belton* – including the one adopted by this Court in *Harvey* – that allowed for a search of the arrestee's vehicle incident to arrest, based on the justification of officer safety, when the arrestee is secured in the back of a police vehicle. Instead, the Supreme Court in *Gant* held that 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 leading to the arrest.

After the individuals below moved to suppress evidence obtained incident to their arrests pursuant to *Gant*, the Supreme Court decided *Davis v. United States*, ___ U.S. ___, 131 S.Ct. 2419 (2011), which involved a defendant whose traffic arrest and vehicle search took place before *Gant* was decided but whose appeal was conducted after *Gant*. In *Davis*, the Supreme Court determined that a motor vehicle search incident to a traffic arrest that occurred before *Gant* was decided violated the Fourth Amendment when the arrestee was secured and there was no reason to believe the vehicle contained evidence of the crime leading to the arrest. *Id.* at 2431. It also held, however, that this Fourth Amendment violation did not warrant the harshness of suppressing the evidence under the exclusionary rule because the officer conducting the search was acting in “objectively reasonable reliance” on binding appellate precedent. *Id.* at 2429. *Davis* does not require a showing of subjective good faith or testimony from the arresting officer as to what cases on which the officer was relying; it establishes an objective test: that when police act with an objectively reasonable good faith belief that their conduct is lawful, the deterrence rationale of the exclusionary rule loses its effect. *Id.* at 2427-28.

In light of *Davis*, when an officer conducts a search incident to arrest in “objectively reasonable reliance” on binding appellate precedent that later is overturned, the exclusionary rule does not mandate suppression of the evidence obtained as a result of that search. In the four cases here, the arresting officers were acting in “objectively reasonable reliance” on the binding appellate precedent of *Belton* and *Harvey*. As such, in accord with *Davis*, the exclusionary rule does not apply to suppress the evidence obtained during the officers’ searches of the arrestees’ vehicles.