

[Cite as *State v. Dent*, 2011-Ohio-1235.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 94823**

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**STATE OF OHIO**

PLAINTIFF-APPELLANT

vs.

**HAROLD DENT**

DEFENDANT-APPELLEE

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-530772

**BEFORE:** Kilbane, A.J., Jones, J., and Rocco, J.

**RELEASED AND JOURNALIZED:** March 17, 2011

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**MARY EILEEN KILBANE, A.J.:**

{¶ 1} Plaintiff-appellant, the state of Ohio (“State”), appeals the trial court’s judgment granting the motion to suppress filed by defendant-appellee, Harold Dent (“Dent”). Finding no merit to the appeal, we affirm.

{¶ 2} In November 2009, Dent was charged in a seven-count indictment. Count 1 charged him with burglary and carried notice of prior

conviction and repeat violent offender specifications. Count 2 charged him with theft, Count 3 charged him with receiving stolen property, Counts 4 and 5 charged him with possessing criminal tools (with Count 4 carrying a forfeiture specification), and Counts 6 and 7 charged him with criminal trespass.<sup>1</sup>

{¶ 3} In December 2009, Dent filed a motion to suppress, in which he argued that the evidence found in his car should be suppressed because the police unlawfully detained him and searched his car. The trial court held a hearing on the motion, at which the following evidence was adduced.

{¶ 4} On October 24, 2009, Cleveland Heights police officer Matthew Lasker (“Lasker”) was on traffic duty when he received a radio broadcast to stop a white Pontiac with the personalized license plates “4Sonia.” The vehicle was observed leaving the scene of a crime (criminal trespass) and was traveling westbound on Cedar Avenue.

{¶ 5} Lasker initiated a traffic stop at approximately 10:44 p.m. Dent, the driver of the Pontiac, legally parked and exited the vehicle.<sup>2</sup> Lasker

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<sup>1</sup>The charges arose from TV equipment police found in a vehicle driven by Dent. Our focus on appeal is on the officer’s actions and subsequent search of the vehicle at the time of Dent’s arrest for criminal trespass. The TV equipment found during the search was not reported missing and connected to Dent until four days after his arrest.

<sup>2</sup>The vehicle was legally parked and would be legally parked on the street until 3:00 a.m.

ordered Dent back into the vehicle until other officers brought two witnesses to the scene. At that point, Dent was instructed to exit the Pontiac and the witnesses identified Dent as the individual they observed trespassing.

{¶ 6} Dent was arrested for criminal trespass and placed in the back of a police cruiser. Lasker then prepared the vehicle for impound and inventoried the Pontiac prior to the tow.

{¶ 7} The trial court granted the motion to suppress, finding that:

**“At the time of arrest there was available to the police, a judge or magistrate within its municipality to obtain a warrant if they had probable cause. [Dent] had legally parked his automobile at the time of arrest; [Dent] was not a danger or threat to police officers; and the charge on which he was arrested ‘criminal trespass’ an M-4 did not give rise to probable cause to search the vehicle for evidence of the crime charged. [Arizona v. Gant, 566 U.S. \_\_\_, 129 S.Ct. 1710, 173 L.Ed.2d 485,] overturns the notion that police can use a pretext to search vehicles without probable cause. The inventory search is such a ‘pretext’ when the police tow a legally parked car, one that would remain legally parked for hours, where the M-4 on which [Dent] was being arrested was subject to a standard bond**

**schedule which [Dent] had available funds to pay on his person and would be able to move the vehicle after the posting of the bond and before the overnight parking ban went into effect.”**

{¶ 8} The State now appeals, raising the following assignment of error for review.

**ASSIGNMENT OF ERROR ONE**

**“The trial court erred in when it granted [Dent’s] motion to suppress evidence obtained subsequent to a constitutional arrest and inventory search.”**

{¶ 9} We note that appellate review of a motion to suppress presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶8. In deciding a motion to suppress, the trial court assumes the role of trier of fact and is in the best position to resolve factual questions and evaluate the credibility of witnesses. *Id.*, citing *State v. Mills* (1992), 62 Ohio St.3d 357, 366, 582 N.E.2d 972. The reviewing court is bound to accept the trial court’s findings of fact if they are supported by competent, credible evidence. *Id.*, citing *State v. Fanning* (1982), 1 Ohio St.3d 19, 437 N.E.2d 583. With respect to the trial court’s conclusion of law, the reviewing court applies a de novo standard of review and decides whether the facts satisfy the applicable legal standard. *Id.*, citing *State v. McNamara* (1997), 124 Ohio App.3d 706, 707 N.E.2d 539.

{¶ 10} In its sole assignment of error, the State argues that the trial court erred when it suppressed the evidence seized from the Pontiac because it was properly inventoried after Dent’s lawful arrest.

{¶ 11} The Fourth Amendment to the United States Constitution provides protection against unreasonable searches and seizures. “It is well established that searches conducted without a warrant are per se unreasonable, subject to certain ‘jealously and carefully drawn’ exceptions.” *State v. Smith*, 124 Ohio St.3d 163, 2009-Ohio-6426, 920 N.E.2d 949, ¶10, citing *Jones v. United States* (1958), 357 U.S. 493, 78 S.Ct. 1253, 2 L.Ed.2d 1514; *Coolidge v. New Hampshire* (1971), 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564. The defendant bears the initial burden to demonstrate that a search was conducted without a warrant. *Coolidge* at 455; *Xenia v. Wallace* (1988), 37 Ohio St.3d 216, 524 N.E.2d 889. Once the defendant can demonstrate that the search was warrantless, the burden then shifts to the government to demonstrate that the search fell within an exception to the warrant requirement. *Xenia* at 218, citing *State v. Kessler* (1978), 53 Ohio St.2d 204, 373 N.E.2d 1252.

{¶ 12} In the instant case, there is no dispute that the search of the Pontiac was conducted without a warrant. Lasker searched the Pontiac, while Dent was still on the scene and secured in the back seat of a police

cruiser. As Dent has met his initial burden, the burden now shifts to the State to demonstrate that the search did not require a warrant.

{¶ 13} The trial court, relying on *Gant*, granted Dent’s motion to suppress. *Gant* applies to situations where police conduct an automobile search incident to arrest after the suspect has been secured. The United States Supreme Court focused on the justifications established for searches incident to arrest — (1) to prevent the suspect from obtaining a weapon or (2) to prevent the destruction of evidence.

{¶ 14} In *Gant*, the defendant was arrested for driving with a suspended license, handcuffed, and detained in a patrol car at the time his vehicle was searched. He had no possible ability to regain access to his vehicle, and there was no evidence related to this offense inside the vehicle. The Court held that “[p]olice 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.”

{¶ 15} In the instant case, the State argues that the search of Dent’s vehicle was a lawful inventory search pursuant to his arrest.<sup>3</sup> However,

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<sup>3</sup>We note that an inventory search of a lawfully impounded vehicle does not contravene the Fourth Amendment to the United States Constitution when the search is administered in good faith and in accordance with reasonable police procedures or established routine. *State v. Mesa*, 87 Ohio St.3d 105, 1999-Ohio-253, 717 N.E.2d 329. See, also, *S. Dakota v. Opperman* (1976), 428 U.S.

*Gant* does not address inventory searches in its analysis. *Gant*'s vehicle was legally parked in another individual's driveway, yet the court never mentioned the inventory search as an applicable exception and ultimately suppressed the evidence. If the court intended the inventory exception to continue to apply when the driver of a car is arrested, it clearly would have applied it to *Gant*, but the court declined to do so.

{¶ 16} In the instant case, Lasker testified that he arrested Dent for criminal trespass and inventoried the Pontiac prior to the tow. However, the Pontiac was legally parked at the time of Dent's arrest and would have been legally parked until 3:00 a.m. "This court has held that police may not seize a defendant's car and conduct an inventory search following a defendant's arrest where it was legally parked and no public concern existed which required the removal of the car from its legally parked place." *State v. Clay*, Cuyahoga App. No. 91942, 2009-Ohio-2725, ¶26, quoting *State v. Ross* (May 20, 1993), Cuyahoga App. No. 62215. See, also, *State v. Thomas*, Cuyahoga App. No. 91891, 2009-Ohio-3461. Furthermore, Dent was secured in the back of the police cruiser and no longer posed a risk to officer safety when Lasker searched the Pontiac, and there is no evidence in the record that

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364, 96 S.Ct. 3092, 49 L.Ed.2d 1000; *Colorado v. Bertine* (1987), 479 U.S. 367, 107 S.Ct. 738, 93 L.Ed.2d 739.



Lasker reasonably believed that the vehicle contained evidence of criminal trespass (entering or remaining on the land of another).

{¶ 17} Based on these circumstances, we find the search of the vehicle was not permitted under *Gant*. Thus, the trial court properly granted Dent's motion to suppress.

{¶ 18} In the alternative, the State argues that even if the inventory search was improper, the search is saved by the good-faith exception to the exclusionary rule. We disagree.

{¶ 19} Under the exclusionary rule, "all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court." *Mapp v. Ohio* (1961), 367 U.S. 643, 655, 81 S.Ct. 1684, 6 L.Ed.2d 1081. The purpose of the exclusionary rule is to deter unlawful police conduct. *United States v. Leon* (1984), 468 U.S. 897, 916, 104 S.Ct. 3405, 82 L.Ed.2d 677. The good faith exception to the exclusionary rule holds that the Fourth Amendment exclusionary rule should not be applied so as to bar the use of evidence obtained by officers acting in objectively reasonable reliance on a search warrant issued by a detached and neutral magistrate, but ultimately found to be unsupported by probable cause. *Leon* at 918-923; *State v. Wilmoth* (1986), 22 Ohio St.3d 251, 265, 490 N.E.2d 1236.

{¶ 20} However, the evidence in the record reveals that Lasker's search was not pursuant to a warrant. Thus, we find that the good faith exception does not apply to the instant case.

{¶ 21} Therefore, the State's sole assignment of error is overruled.

Judgment is affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, ADMINISTRATIVE JUDGE

LARRY A. JONES, J., CONCURS;

KENNETH A. ROCCO, J., DISSENTS (SEE SEPARATE DISSENTING OPINION)

KENNETH A. ROCCO, J., DISSENTING:

{¶ 22} The majority's application of *Gant*, to this case is misplaced. *Gant* involved a search of a defendant's vehicle incident to a lawful arrest for driving with a suspended license. Here, during the suppression hearing, Officer Lasker repeatedly and routinely referred to the search of the vehicle

as an inventory search. Such searches are a well-established exception to the warrant requirement of the Fourth Amendment. *Colorado v. Bertine* (1987), 479 U.S. 367, 371, 107 S.Ct. 738, 93 L.E.2d 739.

{¶ 23} The majority implies that the inventory search exception does not apply in this case because the vehicle was legally parked at the time of appellant's arrest and would have been parked there legally until 3:00 a.m. There is no dispute that Officer Lasker had probable cause to arrest appellant for criminal trespass. The evidence clearly demonstrates that the vehicle was observed leaving the scene of the crime and two witnesses confirmed appellant's identity. In support of their argument, however, the majority relies on a previous statement made by this court that we have "held that police *may not seize a defendant's car* and conduct an inventory search following a defendant's arrest where it was legally parked and no public concern existed which required the removal of the car from its legally parked space." *State v. Clay*, Cuyahoga App. No. 91942, 2009-Ohio-2725. (Emphasis added.)

{¶ 24} The instant case is easily distinguishable from *Clay*. The searched vehicle was not registered to appellant. Additionally, the owner of the vehicle was not a passenger or present at the time of the arrest. Moreover, the status of the vehicle as legally parked would have changed in a

few short hours. Accordingly, I do not find the cases relied upon by the majority compelling in this instance.

{¶ 25} In *State v. Bronaugh* (1984), 16 Ohio App.3d 237, 475 N.E.2d 171, the defendant was arrested while in the automobile. The car was legally parked and did not belong to the defendant. His companion, moreover, did not have a valid operator's license. The appellate court found the impoundment and inventory search of the vehicle legal.

{¶ 26} In *State v. Robinson* (1979), 58 Ohio St.2d 478, 391 N.E.2d 317, certiorari denied (1979), 444 U.S. 942, 100 S.Ct. 297, 62 L.Ed.2d 309, the defendant was arrested while in his automobile. The court allowed an inventory search of the defendant's vehicle because he could not legally remove the car himself.

{¶ 27} In *State v. Hathman* (1992), 65 Ohio St.3d 403, 604 N.E.2d 743, paragraph one of the syllabus, the Supreme Court of Ohio followed the United States Supreme Court and held:

{¶ 28} "To satisfy the requirements of the Fourth Amendment to the United States Constitution, an inventory search of a lawfully impounded vehicle must be conducted in good faith and in accordance with reasonable standardized procedure(s) or established routine." (Citations omitted.)

{¶ 29} Here, the evidence clearly demonstrates that Officer Lasker acted in good faith and in accordance with an established routine. I, therefore, would reverse and remand the trial court's grant of suppression.