

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. 2014-1273
Plaintiff-Appellee,	:	
	:	On Appeal from the
v.	:	Richland County Court of Appeals
	:	Fifth Appellate District
QUAYSHAUN J. LEAK,	:	
	:	C.A. Case No. 13CA72
Defendant-Appellant.	:	

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**REPLY BRIEF OF APPELLANT QUAYSHAUN J. LEAK**

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## STATEMENT OF THE CASE AND FACTS

The State wrongly suggests that the trial court's denial of Quayshaun Leak's motion to suppress was based on a finding that the gun was obtained through the "search incident to arrest" exception to the Fourth Amendment warrant requirement. At the conclusion of the suppression hearing, the trial court found that, following the lawful arrest of Mr. Leak, Officer Anschutz conducted a valid inventory search. The court then announced its decision to deny Mr. Leak's motion:

Okay. Based on what I've heard, it sounds like there was probable cause to arrest. [Officer Anschutz], having been told by his dispatcher that there was an outstanding warrant for a domestic violence perpetrator; that he had a description of the car, including a North Carolina plate, which matched the [Mr. Leak]'s car. Probable cause to approach when [Officer Anschutz] verified it was [Mr. Leak] and arrested him and then decided he was going to have the car towed. He did a proper inventory search for the tow. So it sounds as if it was a search incident to arrest—an inventory search incident to towing the car. Therefore, it was an appropriate search of the car, and therefore, I am not suppressing the gun which was found in the car.

(Tr. 16.) While the phrase "search incident to arrest" was used, the court found the search to be an "inventory search." And, importantly, in its entry denying Mr. Leak's motion, the court ruled that Officer Anschutz conducted a proper inventory search:

The Court made findings of fact and conclusions of law on the record. Specifically, the Court found that there existed probable cause to arrest the defendant pursuant to the issued arrest warrant for domestic violence and that, pursuant to that arrest, the inventory search of the vehicle prior to towing was proper.

(J. Entry, Apr. 12, 2013.) The State's assertion that the trial court found the search to be valid as a "search incident to arrest" is wrong.

## ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

### Proposition of Law

**Because the mere arrest of an occupant of a lawfully parked car should not automatically trigger police impoundment of that car, a warrantless inventory search conducted in such a scenario violates the Fourth Amendment and Section 14, Article I of the Ohio Constitution.**

The State asserts that Mr. Leak has waived any issue regarding the impoundment of the car because he “did not argue in his motion to suppress that the impound of the vehicle was in violation of the United States and Ohio Constitutions.” (Appellee’s Br. 5.) The State is wrong. Mr. Leak challenged the constitutionality of the impoundment and the associated inventory search in the first sentence of his motion:

Now comes Defendant, by and through counsel, and moves this Court to suppress any and all evidence that may have been obtained as a result of the illegal and unconstitutional search and seizure of the defendant and vehicle.

(Mot. to Suppress Evidence, Jan. 28, 2013.)

The State also asserts that “[Mr. Leak] has argued he does not own the vehicle in question.” (Appellee’s Br. 5.) Again, the State is wrong. Mr. Leak stated in his memorandum in support of jurisdiction that “[Officer Anschutz] believed that Mr. Leak owned the car, but that fact was not established at the suppression hearing.” (Mem. in Supp. of Jurisdiction 2.) In his merit brief, Mr. Leak stated that “[t]he suppression hearing \* \* \* did not establish who owned the car.” (Appellant’s Br. 1.)

The State further claims that the inventory search was valid because Officer Anschutz’s decision to impound the car was a reasonable discharge of his community-caretaking function. In *City of Blue Ash v. Kavanagh*, 113 Ohio St.3d 67, 2007-Ohio-1103, 862 N.E.2d 810, ¶ 10-16, this Court held that impoundment was lawful because the officer was “expressly authorized” to impound a vehicle by state and local code. Here, as Mr. Leak set

out in his merit brief, impoundment was not legally authorized. *See* R.C. 4513.61; Mansfield Code of Ordinances 307.01.

The State argues that the impoundment may be valid even without statutory authorization so long as the impoundment is a reasonable exercise of the community-caretaking function. But the State fails to articulate how the impoundment was consistent with Officer Anschutz's administrative community-caretaking role, rather than the officer's criminal investigation of Mr. Leak. *See South Dakota v. Opperman*, 428 U.S. 364, 368-370, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976). The officer did not testify that the car was "impeding traffic or threatening public safety." *Kavanagh* at ¶ 11, quoting *Opperman* at 369.

On the contrary, Officer Anschutz acknowledged he was searching for criminal evidence. (Tr. 12.) Because the impoundment served as a pretext for the evidentiary search of the car, rather than furthering any articulable community-caretaking function, the State has failed to demonstrate a valid inventory-search exception to the warrant requirement of the Fourth Amendment. *See Kavanagh* at ¶ 17-20, quoting, in part, *Colorado v. Bertine*, 479 U.S. 367, 372, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987).

Finally, in line with its mischaracterization of the trial court's suppression ruling, the State claims Officer Anschutz conducted a lawful search incident to arrest. But the State offers no authority to support or explain how the officer's search in this case qualifies as such. In *Arizona v. Gant*, 556 U.S. 332, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009), the United States Supreme Court clearly delineated the limited circumstances under which a vehicle can be searched "incident to arrest." As succinctly summarized by this Court, such warrantless automobile searches are lawful under *Gant* "only if genuine safety or evidentiary

concerns justify the search.” *State v. Johnson*, 141 Ohio St.3d 136, 2014-Ohio-5021, 22 N.E.3d 1061, ¶ 41.

The search of an automobile “incident to arrest” can be justified only by either of two circumstances: (1) “the arrestee is within reaching distance of the passenger compartment at the time of the search” or, (2) the officer conducting the search has a reasonable belief that the vehicle contains evidence of the offense of arrest. *Gant* at 351. Here, prior to searching the car, Officer Anschutz arrested Mr. Leak and placed him in the back of his cruiser. (Tr. 5.) And the officer did not articulate any reason for believing, or that he did, in fact, believe, that the car contained evidence of domestic violence. (Tr. 12.) He had no knowledge of the alleged facts surrounding the domestic violence charge, including where the incident occurred. (Tr. 12.) Officer Anschutz conducted a warrantless search of the car and the justifications for a valid automobile search incident to arrest set out by the Court in *Gant* are unquestionably absent. *See Gant* at 351.

### **CONCLUSION**

Because Officer Anschutz lacked authority to impound the car and because he was engaged in the criminal investigation of Mr. Leak rather than discharging his community-caretaking function, Mr. Leak asks this Court to reverse the judgment of the court of appeals and to order the suppression of the firearm, or alternatively, to remand with instructions to suppress the firearm.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing REPLY BRIEF OF APPELLANT QUAYSHAUN J. LEAK has been sent on this 16th day of March, 2015, by regular U.S. mail, to:

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