NO. 4-09-0671 Order Filed 3/10/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JAMES R. LOCKHART, Defendant-Appellant. | ) ) ) ) ) ) ) ) | Appeal from Circuit Court of Coles County No. 08CF78 Honorable Mitchell K. Shick, Judge Presiding. |

JUSTICE APPLETON delivered the judgment of the court.
Justices Turner and Steigmann concurred in the judgment.

**ORDER**

*Held*: When a police officer was legally authorized to retrieve the keys from the ignition of defendant's vehicle upon defendant's arrest and found contraband in plain view lying on the driver's seat, the seizure of the contraband was not unreasonable or a violation of the fourth amendment.

I. BACKGROUND

On February 29, 2008, the State charged defendant with one count of unlawful possession of methamphetamine with the intent to deliver (720 ILCS 646/55(a)(1) (West 2008)) as a result of a December 30, 2007, traffic stop. Mattoon police officers had stopped defendant's pickup truck after discovering that his license plate had been suspended due to a mandatory-insurance violation. The officers then discovered that defendant's driver's license was suspended as well and arrested defendant for the latter offense. During the conduct of the stop, police found in the vehicle a plastic bag containing a white powdery substance, which tested positive for methamphetamine.

On April 22, 2009, defendant filed a motion to suppress evidence, claiming the drugs were found during an illegal search of his vehicle. Citing *Arizona v. Gant*, No. 07-542 (April 21, 2009), 556 U.S. ___, a recent Supreme Court decision which addressed the search-incident-to-arrest exception to the warrant requirement relating to vehicle searches, defendant claimed the police officers did not have the authority to conduct a search incident to his arrest because he had been secured and was not within reaching distance of the passenger compartment of the vehicle, and the officers could not reasonably have been searching for evidence of the offense of driving while suspended.

At the hearing, defendant presented the trial court with a video recording of the traffic stop conducted at 12:30 a.m. on December 30, 2007. Defendant called Mattoon police officer Tim St. John to testify. Defendant's counsel played the video recording as he questioned St. John. The officer explained that he decided to "r[u]n the license plate" of defendant's vehicle and discovered that defendant's license plate had been suspended for a mandatory-insurance violation. As defendant turned into a grocery store parking lot, St. John activated his overhead lights to initiate a traffic stop. After approaching defendant, St. John learned that defendant's driver's license was suspended as well. He arrested defendant for driving while his license was suspended.

As St. John was preparing to secure defendant in handcuffs, another officer, Ryan Hurst, opened the driver's side door of defendant's pickup truck. St. John told defendant that he was not going to have the vehicle towed because, at that point, St. John assumed the only violations were the suspended license plate and suspended driver's license. Hurst had planned to secure the vehicle when he found the drugs on the driver's seat.

Officer Hurst also testified, with the aid of the video recording, to the events as they occurred during the traffic stop. He said as St. John was handcuffing defendant, he opened the driver's side door and "began looking through the vehicle" for the keys and "any contraband." Hurst said he leaned into the truck and "as soon as [his] head entered the compartment of the vehicle," he saw the plastic bag laying on the driver's seat, close to the seat belt receiver. Hurst grabbed the bag and held it up for St. John and defendant to see.

Our review of the video recording revealed the following in relation to the pertinent facts. Defendant had pulled into a parking space and St. John stopped the patrol car directly behind defendant's truck. St. John approached the driver's side of the truck, advised defendant why he had been stopped, and asked for defendant's driver's license. While St. John was speaking with defendant, Hurst approached the passenger side of the truck. Defendant presented St. John not with his driver's license, but with more than one traffic citation--citations apparently related to defendant having no insurance. St. John and Hurst returned to the patrol car. Defendant exited his truck and walked toward the patrol car, asking if he could search his truck for his insurance card. St. John said he could.

Defendant opened the driver's-side lid of a tool box in the bed of his truck and looked inside. He closed the lid and walked around the back of his truck to the passenger side. He raised the tool-box lid on the passenger's side, reached in first with one hand and then both. He closed the lid and walked around the back of the truck. He searched the passenger compartment of the truck by leaning in from the driver's side. It appeared he cocked the bench seat of the truck forward to search behind the seat. He stepped out and closed the driver's side door, walked around the front of the truck to the passenger side, opened the door, and leaned inside. He closed the passenger door and walked back around

the front of the truck to the driver's side and once again searched inside.

Hurst approached the truck on the passenger side and St. John approached defendant as he searched inside the truck on the driver's side. Hurst shined his flashlight into the passenger side of the truck. Defendant closed the driver's side door. St. John asked defendant to perform a field-sobriety test because he smelled alcohol and defendant admitted he had consumed one drink. Hurst stood at the back of the truck while defendant performed the test. St. John approached Hurst and told him he did not believe defendant was intoxicated.

St. John informed defendant that his driver's license was suspended and asked defendant if he had $100 cash for bond. Defendant searched his pockets for cash. St. John advised defendant that he could telephone someone to bring his bond to the jail. St. John told defendant that due to the driver's license suspension, he had to place him into custody. He told defendant that he would not tow defendant's truck, but defendant had to come up with some way to get the truck removed from the lot. St. John asked defendant to put his hands behind his back. Defendant's cellular telephone rang. St. John asked if that was someone calling that could bring him bond. Defendant said it was not and that he would probably call his aunt. He turned off his telephone without answering it. He turned his back to St. John with his hands behind his back.

At the same time, Hurst opened the driver's side door to the truck and asked defendant if he had the keys. Defendant told Hurst the keys were in the ignition. Hurst leaned into the truck with his flashlight in one hand. Defendant said, "You don't have to worry about locking it." St. John asked defendant if there was anything illegal in the truck. Defendant said no. Hurst had been leaning into the truck for approximately 10 seconds,

when he pulled his head out of the truck, holding a plastic bag and asked: "What's this?" St. John said it looked like cocaine. St. John placed defendant in the backseat of the patrol car and he and Hurst thoroughly searched the vehicle. The remainder of the events on the recording are not relevant to the motion to suppress.

After the presentation of evidence, the parties argued the applicability of the Supreme Court's decision in *Gant*. In announcing its decision, the trial court noted that, prior to the discovery of the contraband, the police officers here did not have probable cause or reasonable suspicion to believe that defendant possessed any drugs. However, upon the officers' decision to arrest defendant and take him into custody for driving while suspended, they were obligated to secure his vehicle. In doing so, they had to get the keys, roll up the windows, and lock the doors. Defendant told Hurst, upon Hurst's inquiry, that the keys were in the ignition. The court recounted Hurst's testimony that as he reached into the truck, he "observed in plain view a bag, which based upon his training and experience, was evidence to him of narcotics."

The trial court found defendant did not have a reasonable expectation of privacy in the passenger compartment of his truck where the drugs were found. The court further held that Hurst had not searched the vehicle, but instead found the drugs in plain view as he reached in for the keys. The court held the "search" was not illegal or improper and denied defendant's motion to suppress.

On May 19, 2009, the trial court conducted a stipulated bench trial. First, the State informed the court that it was amending defendant's charge to unlawful possession of less than five grams of methamphetamine, a Class 3 felony, and striking the "intent to deliver" element. After accepting the stipulation, the court convicted defendant of the

offense as charged. Defendant filed a motion for a new trial, preserving his challenge to the court's order denying his motion to suppress. In August 2009, the court sentenced defendant to 30 months' probation. This appeal followed.

## II. ANALYSIS

Defendant's sole contention on appeal is that the search of his vehicle was not a valid search incident to his arrest. The State claims there was no search within the meaning of the fourth amendment and that the contraband found in the truck was in plain view. As an alternative argument, the State contends the search was valid as incident to defendant's arrest. As they did in the trial court, the parties here each argue the applicability of the Supreme Court's decision in *Gant*. Defendant contends the trial court erred in denying his motion to suppress. We disagree.

In reviewing a trial court's ruling on a motion to suppress evidence, we apply the two-part standard of review adopted by the Supreme Court in *Ornelas v. United States*, 517 U.S. 690, 699 (1996). *People v. Cosby*, 231 Ill. 2d 262, 271 (2008). Under this standard, we give great deference to the trial court's factual findings and will reverse those findings only if they are against the manifest weight of the evidence. *Cosby*, 231 Ill. 2d at 271. However, we review *de novo* the trial court's ultimate legal determination of whether the evidence should be suppressed. *Cosby*, 231 Ill. 2d at 271. The burden of proving the unlawfulness of a search and seizure on a motion to suppress rests with defendant. *People v. Ramsey*, 362 Ill. App. 3d 610, 614 (2005).

The fourth amendment to the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. Reasonableness under the

fourth amendment generally requires a warrant supported by probable cause. *Katz v. United States*, 389 U.S. 347, 357 (1967). A search conducted without a warrant is *per se* unreasonable under the fourth amendment, subject only to a few specific and well-defined exceptions. *Gant*, slip op. at 5, 556 U.S. at ____. One of the exceptions is a search incident to arrest. *Gant*, slip op. at 5, 556 U.S. at ____. However, the Supreme Court recently clarified that a search incident to arrest is authorized only when the arrestee is unsecured and within reaching distance of the passenger compartment of the vehicle, or if the officers are searching for evidence of the immediate offense. *Gant*, slip op. at 13, 556 U.S. at ____. Defendant argues that neither circumstance applied to his case, and therefore, relying on *Gant*, the search of his truck was illegal.

The State argues that defendant's contention under *Gant* is irrelevant where the evidence clearly shows that there was no search within the meaning of the fourth amendment. The drugs found were seized after Hurst found them laying on the seat in plain view as he was securing defendant's truck, incident to his community caretaking duties.

Under the so called "plain view" doctrine, when it first appears that the officer has the right to be in the position to have that view, seizure without a warrant of evidence of another crime which is seen in plain view is justified and may not be considered the product of an unreasonable search. *Coolidge v. New Hampshire*, 403 U.S. 443, 464-71 (1971). In *Texas v. Brown*, 460 U.S. 730, 739-40 (1983), the Supreme Court held that the police officer's use of a flashlight to illuminate the interior of the defendant's car did not infringe upon any fourth-amendment right and that there was no legitimate expectation of privacy shielding that portion of the interior of a vehicle which may have been viewed from

outside by either "inquisitive passersby or diligent police officers."

Given the circumstances of this case, we agree with the State. Hurst had not necessarily begun a search of defendant's truck so as to trigger the application of the search-incident-to-arrest principles espoused in *Gant*. Rather, Hurst undertook the duty of preparing defendant's vehicle to be left unattended in the parking lot. As defendant was being handcuffed by St. John, defendant had told Hurst that his keys were in the ignition. It was reasonable to assume Hurst had planned to turn off the engine, roll up the windows, retrieve the keys, and lock the doors. As the State points out, a section of the Illinois Vehicle Code requires that no one leave a vehicle unattended without first securing it. See 625 ILCS 5/11-1401 (West 2008). Hurst was performing on defendant's behalf this caretaking function. It was when Hurst reached into the truck for the keys that he found the drugs lying on the driver's seat in plain view. Consequently, we conclude that the seizure of the contraband found in plain view was reasonable and not violative of defendant's constitutional rights. See *Brown*, 460 U.S. at 740. The trial court did not err in denying defendant's motion to suppress.

## III. CONCLUSION

For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

Affirmed.