

No. 45,138-KW

COURT OF APPEAL  
SECOND CIRCUIT  
STATE OF LOUISIANA

\*\*\*\*\*

STATE OF LOUISIANA

Appellant

versus

RONNIE BROWN

Appellee

\*\*\*\*\*

On Application for Supervisory Writ from the  
Second Judicial District Court for the  
Parish of Jackson, Louisiana  
Trial Court No. 42,169

Honorable Jenifer W. Clason, Judge

\*\*\*\*\*

JONATHAN M. STEWART  
District Attorney

Counsel for  
Appellant

DOUGLAS LEON STOKES, JR.  
Assistant District Attorney

DARRELL ROBERT AVERY

Counsel for  
Appellee

\*\*\*\*\*

Before WILLIAMS, PEATROSS and DREW, JJ.

WILLIAMS, J., dissents.

STATE OF LOUISIANA  
COURT OF APPEAL, SECOND CIRCUIT  
430 Fannin Street  
Shreveport, LA 71101  
(318) 227-3700

NO: 45,138-KW

STATE OF LOUISIANA

VERSUS

RONNIE BROWN

FILED: 10/14/09

RECEIVED: PM 10/13/09

On application of State of Louisiana for SUPERVISORY WRIT in No. 42,169 on the docket of the Second Judicial District, Parish of JACKSON, Judge Jenifer Ward Clason.

Jonathan M. Stewart  
Douglas Leon Stokes, Jr.

Counsel for:  
State of Louisiana

Darrell Robert Avery

Counsel for:  
Ronnie Brown

Before WILLIAMS, PEATROSS and DREW, JJ.

**WRIT GRANTED; REVERSED AND REMANDED.**

The search, occurring on January 5, 2009, is legal, at least on this record.

**First**, *Arizona v. Gant*, 129 S. Ct. 1710 (4/21/09), may or may not be applicable to searches already conducted as the date of the decision. *Gant* has admittedly now restricted *New York v. Belton*, 101 S. Ct. 2860 (1981), for criminal searches occurring after the date of the opinion. In this writ application, however, it is of no moment, because the testimony at the motion to suppress establishes that on January 5, 2009, Deputy Shultz's vehicular search complied with the later requirements of *Gant*, because the arrestee (Ronnie Brown):

1. Had just been arrested;
2. Was still near the 18-wheeler; and
3. Was not shackled until after the discovery of the drugs.

**Second**, the law until April 21, 2009, (the date of the *Gant* opinion) was exactly as the deputy told the defendant. On January 5, 2009, it is crystal-clear that the passenger compartment could be searched incident to the arrest of a vehicular occupant, so long as the arrestee was still relatively near the vehicle, and had just recently been in the vehicle, as per *Thornton v. United States*, 124 S. Ct. 2127

(2004), though the USSC gave us in *Thornton* no guidelines as to how far was too far, nor how long was too long. In *State v. Canezaro*, 957 So. 2d 136 (La. 2007), a vehicular search incident to arrest was approved by the La. Supreme Court (18.5 months before the search of R. Brown's 18-wheeler cab and 22 months before *Gant*) when, at the moment of the search incident to arrest, the two defendants were arrested, shackled, and locked in the police car at the scene, as per *Belton*.

**Third**, the deputy testified that he received a second consent—and he was the only witness at the motion to suppress. The defendant did not seek to controvert his second consent by testifying for the limited purpose of the motion to suppress. Therefore, nothing in this sparse record refutes the validity of the second consent. The record may be fuller on appeal, in case of a conviction.

**Fourth**, if what the deputy said (about his legal right to search without consent) turns out not to have been the law on January 5, 2009, he was still in good faith [as per *United States v. Leon*, 104 S. Ct. 3405 (1984)] to say what the law allowed at the time (nobody knew or could have known what *Gant* was going to later hold), thus his securing of consent was valid, being obtained in good faith.

**Fifth**, the declaration by the defendant as to a firearm being in the cab presented a potential safety concern when leaving the vehicle in a parking lot with public access. The officer was objectively reasonable in removing the weapon to protect the public. See *State v. White*, 1 So. 3d 439 (La. 1/21/09).

The court is aggrieved to some extent that the state's application was not in strict compliance with U.R.C.A. 4-4. Further, with a trial date of October 19, and the writ application not being filed until October 14, the applicant should have requested expedited consideration.

The ruling of the trial court, granting the motion to suppress, is reversed, and the case is remanded for further proceedings.

THIS WRIT ORDER IS DESIGNATED FOR PUBLICATION.

Shreveport, Louisiana, this 15<sup>th</sup> day of October, 2009.

CBP \_\_\_\_\_ 

FILED: October 15, 2009

Helewis Ruben  
CLERK

ATW

WILLIAMS, J., dissents.