

No. 47,187-KW

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA

Applicant

versus

SHELLEY P. COOK

Respondent

* * * * *

On Application for Supervisory Writs from the
Fourth Judicial District Court for the
Parish of Ouachita, Louisiana
Trial Court No. 10F19674

Honorable Daniel Ellender, Judge

* * * * *

JAMES D. CALDWELL
Attorney General

Counsel for
Applicant

JERRY L. JONES
District Attorney

MADELEINE M. SLAUGHTER
Assistant District Attorney

RONALD K. COOK
WADE L. HOUSE

Counsel for
Respondent

* * * * *

Before CARAWAY, DREW and LOLLEY, JJ.

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

NO: 47,187-KW

STATE OF LOUISIANA

VERSUS

SHELLEY P. COOK

FILED: 12/20/11

RECEIVED: PM 12/19/11

On application of State of Louisiana for SUPERVISORY WRIT in No. 10-F19674 on the docket of the Fourth Judicial District, Parish of OUACHITA, Judge Daniel Joseph Ellender.

Hon. James David Caldwell
Hon. Jerry L. Jones
Madeleine Slaughter-Young

Counsel for:
State of Louisiana

Ronald Keith Cook

Counsel for:
Shelley P. Cook

Before: CARAWAY, DREW and LOLLEY, JJ.

WRIT GRANTED. MADE PEREMPTORY.

In this traffic-stop situation, the defendant was placed under arrest for driving while intoxicated after the officer smelled alcohol and conducted a field sobriety test on the defendant. With arrangements underway for someone related to defendant to obtain the vehicle and prevent its impoundment, an officer at the scene removed defendant's purse from the vehicle and examined its contents. The purse revealed a baggie of methamphetamines, straws and a pipe.

The defendant was charged with possession of methamphetamines, a Schedule II controlled dangerous substance. Following a suppression hearing, the trial court ruled the search of the purse to be a violation of the Fourth Amendment's protections. The state requests that we exercise our supervisory powers to reverse the adverse trial court ruling suppressing the utilization at trial of evidence seized from the defendant's purse subsequent to her arrest for D.W.I., La. R.S. 14:98.

Though a number of ancillary issues¹ could be discussed in any Fourth Amendment analysis of these facts, only one exception to the warrant requirement is necessary here for us to validate the search and seizure and to reverse the ruling of the trial court.

Under *Arizona v. Gant*, 556 U.S. 332, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009), if an occupant of a vehicle is arrested the current doctrine of *Search Incident to Arrest* allows only two ways in which the passenger compartment (and any containers therein) may be searched, as a contemporaneous incident of the arrest.

The first exception (an unshackled arrestee, still near the car) is inapplicable to the current facts.

The second exception allows law enforcement to search the passenger compartment incident to arrest, together with any containers located therein, if there is a reasonable belief (reasonable suspicion) that evidence of the crime of arrest is in the car. Of any genre of crime, the one most likely to fit this criteria would be the arrest of an impaired operator. The observed impairment of the driver in this case, while clearly involving alcohol, raises the considerable possibility for the involvement of other drugs used by the defendant. It is therefore reasonable to believe that evidence of the crime of arrest (beer bottles, pills, other drugs) would be located in the vehicle being unlawfully operated by the arrestee and in her purse.

Accordingly, we vacate the trial court’s suppression of the evidence seized from the defendant’s purse and remand for further proceedings consistent with this ruling.

REVERSED AND REMANDED.

THIS WRIT ORDER IS DESIGNATED FOR PUBLICATION.

Shreveport, Louisiana, this _____ day of _____, 2012.

FILED: _____

CLERK

¹Other arguable exceptions to the warrant requirement:
• a probable cause search of the entire vehicle, or
• an inventory of the vehicle and its containers, or
• consent.