

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20080914-CA
v.)	
)	F I L E D
Deborah Gaye Brower,)	(May 29, 2009)
)	
Defendant and Appellant.)	2009 UT App 143

Third District, Salt Lake Department, 071907055
The Honorable Deno G. Himonas

Attorneys: Linda M. Jones and Sharla M. Dunroe, Salt Lake City,
for Appellant
Mark L. Shurtleff and Marian Decker, Salt Lake City,
for Appellee

Before Judges Bench, Davis, and McHugh.

PER CURIAM:

Based upon the recent case of Arizona v. Gant, 173 L. Ed. 2d (2009), the State concedes error and moves for summary reversal of the judgment in this case. The motion is not opposed.

Defendant Deborah Gaye Brower was the driver and sole occupant of a vehicle that was stopped after an officer observed the driver turn without signaling. Defendant advised the officer that she did not own the vehicle and gave him both her personal information, and the name and contact information for the owner. A computer check revealed outstanding felony warrants for Defendant's arrest related to possession of a forged written instrument and a federal parole violation. The officer contacted the vehicle's owner, who stated that Defendant had permission to drive the vehicle and also stated that he would come and pick up the vehicle. The officer had Defendant exit the vehicle, after which he advised her of the outstanding warrants, arrested her, handcuffed her, searched her person, and placed her in his patrol vehicle. The officer then searched the vehicle for any items or evidence of contraband, while another officer maintained security. During this search, the officer found two purses on the front passenger seat. Inside one of the purses, the officer found a contact lens case containing a crystal-like substance and a small bag containing a green leafy substance. After the State filed two counts for possession of a controlled substance and

driving on an invalid license, Defendant filed a motion to suppress the officer's warrantless search of the areas inside the vehicle. After the district court denied the motion, Defendant entered a conditional guilty plea and brought the present appeal.

The district court in the instant case interpreted State v. Belton, 453 U.S. 454 (1981) as allowing a police officer who has made a lawful custodial arrest of the occupant of a vehicle to search the passenger compartment of the vehicle and any open or unopened containers therein as a contemporaneous incident of that arrest. See id. at 460-61. However, some jurisdictions have adopted more stringent rules restricting the search incident to arrest relying upon their own state constitutions. In this appeal, Defendant contended that Utah "should definitively join those jurisdictions that have rejected the Belton test." Accordingly, Defendant advocated an analysis under the Utah Constitution for assessing the warrantless search of a vehicle after the occupant has been arrested and secured.

On April 21, 2009, the United States Supreme Court issued Arizona v. Gant. In Gant, the Supreme Court rejected the broad reading of Belton that would allow "a vehicle search incident to every recent occupant's arrest" and held that its precedent "authorizes police to search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search." 173 L. Ed. 2d at 496. The Supreme Court concluded that "[b]ecause police could not reasonably have believed either that Gant could have accessed his car at the time of the search or that evidence of the offense for which he was arrested might have been found therein, the search in this case was unreasonable." Id. at 497.

The State concedes that the search of the vehicle that Defendant was driving violated the Fourth Amendment based upon the United States Supreme Court's decision in Gant and moves for summary reversal of the conviction on that basis. We grant the State's motion and reverse Defendant's conviction and sentence.

Russell W. Bench, Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge