

No. _____

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

REBECCA JOY OWENS, Petitioner,

v.

STATE OF LOUISIANA, Respondent

On Petition for Writ of Certiorari to the
Supreme Court for the State of Louisiana

PETITION FOR A WRIT OF CERTIORARI

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Counsel for Petitioner

QUESTIONS PRESENTED

1. Does *Arizona v. Gant*, 556 U.S. 332, 129 S.Ct. 1710 (2009), grant broad authority to search an arrestee's vehicle when the arrestee is not within reaching distance of the passenger compartment at the time of the search and there is no reasonable belief by law enforcement that the vehicle contains evidence of the offense of arrest or is determining such a search to be constitutionally permissive under *Gant* a misstatement of federal law?

LIST OF PARTIES

1. Petitioner/Appellant: Rebecca Joy Owens, through her attorneys Milton Masinter and David Greene, Assistant Louisiana State Public Defenders, 402 N. Jefferson Ave, Covington, LA 70433, Telephone: (985) 892-5002, mmasinter@northshoreddefenders.org and dgreene@northshoreddefenders.org.
2. Respondent/Appellee: Iberia Parish District Attorney's Office, Attorney W. Claire Howington, 300 South Iberia Street, #200 New Iberia, Louisiana 70560.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner Rebecca Owens respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The per curium of the Louisiana Supreme Court appears at appendix A to this petition. The court's per curium is associated with Louisiana Docket Number 2017-KK-1258.

JURISDICTION

The Louisiana Supreme Court issued its decision on November 13, 2017. A copy is attached at appendix A. The Louisiana Supreme Court entered final judgment on January 12, 2018 when it denied the rehearing request made by defense counsel. A copy of the judgment is attached at appendix B. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

Rebecca Owens, the defendant, was arrested on June 3, 2016 for Possession of Schedule III (Suboxone) and traffic offenses. The arresting officer's body camera footage, attached at appendix D, was made available to both the State and defense counsel. On July 12, 2016, the State of Louisiana filed a Bill of Information against Ms. Owens for one count Possession of Schedule III (Suboxone) (R.S. 40:968.C) and various traffic offenses.

A Motion to Suppress was filed on January 12, 2017 and was both heard and denied on February 13, 2017. Following the denial, defense counsel filed a writ of certiorari with the Louisiana Court of Appeals for the Third Circuit on April 18, 2017. In a 2-1 decision, the Louisiana Third Circuit granted the writ and ruled the search unconstitutional. A copy of that

decision is attached at appendix C. The State of Louisiana sought review with the Louisiana Supreme Court on July 18, 2017. On November 13, 2017, that State Supreme Court reversed the Third Circuit and deemed the search constitutionally permissible as a search incident to arrest, with one Justice dissenting. Defense counsel requested rehearing on the issue and was denied on January 12, 2018.

The Louisiana Supreme Court issued a per curium when it granted the State's writ of certiorari. In that per curium, the Louisiana Supreme Court relied upon *Gant* in determining that the search of the defendant's vehicle was a search incident to arrest.

The case was set for trial on March 19, 2018. Defense counsel requested a stay of proceedings, which was denied by the trial court, and the defendant entered a guilty plea to the charges on that day. The guilty plea was made in conjunction with *State v. Crosby*, 338 So. 2d 584 (LA 1976), under which the trial court, with permission from the State, agreed to accept the plea of guilty while Defendant reserved her right to seek review of the Louisiana State Supreme Court decision with this Honorable Court.

The Louisiana courts have had a full and fair opportunity to resolve the Fourth Amendment issue at stake. The State Supreme Court was fully briefed on the law regarding searches incident to arrest and deemed this search constitutionally permissive. While the State of Louisiana may assert that the Defendant has not exercised all available state remedies, thus precluding her from seeking review by this Honorable Court due to the exhaustion doctrine, defense counsel asserts that to do so would be superfluous and a waste of judicial economy. See, e.g., *Castille v. Peoples*, 489 U.S. 346, 351 (1989). While defense counsel recognizes the doctrine of comity, counsel asserts that the State of Louisiana is not prejudiced should this

Honorable Court address this request for review due to the Louisiana Supreme Court already making a final determination on the issue.

Petitioner now seeks a writ of certiorari from this Court to address the question presented in this case.

REASON FOR GRANTING THE PETITION
THE COURT SHOULD GRANT THE WRIT BECAUSE THE LOUISIANA SUPREME
COURT INCORRECTLY STATED FEDERAL LAW AND THUS DECIDED AN
IMPORTANT FEDERAL QUESTION IN A WAY THE CONFLICTS WITH RELEVANT
DECISIONS OF THIS COURT

The Louisiana Supreme Court, in it's per curium, highlights that the defendant was arrested due to an outstanding child support warrant after a valid traffic stop. The court then states that, "Once the officer was authorized to arrest defendant, it was undisputedly lawful to search her as an incident of the arrest. See *Arizona v. Gant*, 556 U.S. 332, 339, 129 S.Ct. 1710, 1716-17, 173 L.Ed.2d 485 (2009)" This is a misstatement of *Gant*. The rule in *Gant* is that, "Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies." (*Gant at 351*). The Louisiana Supreme Court suggests *Gant* gives law enforcement broad discretion to conduct a search after arrest when, in reality, *Gant* narrowed *New York v. Belton*, 453 U.S. 454 (1981)) by providing only two valid situations under which a search would be permissible. Neither of these situations are present, as evidenced by the body camera footage.

The video footage shows that, because the officer was arresting the Defendant due to an active warrant for non-support, the officer would have no reason to believe that the underlying

charge inherent in that warrant would be supported by a search of the vehicle. What would the officer hope to find in her vehicle to demonstrate she was not paying her child support? Moreover, *Gant* seems to be authorizing the search as it relates to the arrest at hand; finding evidence to further the charge being made by law enforcement at that moment. Since this is an arrest based on a child support warrant, a determination has already been made that the arrest must be perfected and no search would be required as no charge is being leveled by law enforcement at that moment.

The footage also shows the officer conducts the search of the vehicle separate and apart from the Defendant. While she is not handcuffed, she is under the officer's orders and obeys the substance of his commands. Reviewing the body camera, there appears to be no point where the defendant is standing near the passenger compartment during the search. Indeed, she is away from her vehicle for almost the entirety of the stop. As such, the Defendant's lack of proximity to the vehicle during the search is paramount to a determination of whether this search was authorized under *Gant*. Since she is absent during the search, the *Gant* rationale would conclude the search impermissible.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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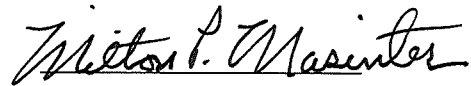
AFFIDAVIT OF VERIFICATION AND CERTIFICATION OF SERVICE

STATE OF LOUISIANA

PARISH OF ST. TAMMANY

Before me, the undersigned Notary, this date, personally came and appeared David Greene who, after being duly sworn, did depose and state that he is counsel in the forgoing Writ Application and that all of the allegations contained within the Writ Application are true to the best of this counsel's knowledge, information, and belief.

Affiant further certifies that he has mailed on this day and through the United States Postal Service a copy of the foregoing brief to Attorney W. Claire Howington of the Iberia Parish District Attorney's Office, 300 South Iberia Street, #200 New Iberia, Louisiana 70560.



Milton Masinter #08689

Sworn to and subscribed before me on this day of April 11, 2018.



11/13/2017 "See News Release 055 for any Concurrences and/or Dissents."

SUPREME COURT OF LOUISIANA

No. 17-KK-1258

STATE OF LOUISIANA

versus

REBECCA JOY OWENS

**ON WRIT OF CERTIORARI TO THE THIRD CIRCUIT
COURT OF APPEAL, PARISH OF IBERIA**

PER CURIAM:

Writ granted. Defendant was stopped in traffic after an officer saw her veer across the fog line and then determined that her license plate was registered to a different vehicle. Defendant did not have a driver's license with her and the officer discovered that she had an outstanding warrant for failure to pay child support. After the officer announced his intent to search the vehicle and inquired about contraband, defendant admitted she had Suboxone in her purse. After he seized the Suboxone, the officer arrested defendant, *Mirandized* her, and searched the vehicle.

The court of appeal found the trial court erred in denying defendant's motion to suppress the Suboxone found in defendant's purse. *State v. Owens*, 17-0369 (La. App. 3 Cir. 6/15/17) (unpub'd). The court of appeal found the search was not incident to arrest, the officer did not obtain the defendant's consent to search, and the officer did not *Mirandize* her until after he asked whether she had any contraband in the vehicle or on her person. Judge Saunders dissented that the search was valid because it was incident to arrest. We agree.

There is no question the traffic stop here was lawful. While conducting the traffic stop, the officer discovered an outstanding warrant. The officer's decision to run the warrant check was a "negligibly burdensome precautio[n]" for officer safety. *Rodriguez v. United States*, 575 U.S. —, —, 135 S.Ct. 1609, 1616, 191 L.Ed.2d 492 (2015). Furthermore, "[a] warrant is a judicial mandate to an officer to conduct a search or make an arrest, and the officer has a sworn duty to carry out its provisions." *United States v. Leon*, 468 U.S. 897, 920 n.21, 104 S.Ct. 3405, 3419, 82 L.Ed.2d 677 (1984) (internal quotation marks omitted). Once the officer was authorized to arrest defendant, it was undisputedly lawful to search her as an incident of the arrest. *See Arizona v. Gant*, 556 U.S. 332, 339, 129 S.Ct. 1710, 1716–17, 173 L.Ed.2d 485 (2009) (explaining the permissible scope of searches incident to arrest); *see also State v. Butler*, 12-2359, p. 5 (La. 5/17/13), 117 So.3d 87, 89–90 (per curiam) (finding defendant could be searched after he was seen riding his bicycle on the sidewalk, which municipal ordinance violation rendered him subject to arrest). Furthermore, where the formal arrest followed quickly on the heels of the challenged search, it is "not . . . particularly important that the search preceded the arrest rather than vice versa." *Rawlings v. Kentucky*, 448 U.S. 98, 111, 100 S.Ct. 2556, 2564, 65 L.Ed.2d 633 (1980). Therefore, we reverse the court of appeal, reinstate the trial court's ruling denying defendant's motion to suppress, and remand to the trial court for further proceedings.

REVERSED AND REMANDED

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

NO. 2017-KK-1258

VS.

REBECCA JOY OWENS

IN RE: Rebecca Joy Owens.; - Petitioner; Applying for Rehearing of this Court's action dated November 13, 2017, Parish of Iberia, 16th Judicial Court Div. D, No. 16-CR-0801; to the Court of Appeal, Third Circuit, No. KW 17-00369;

January 12, 2018

Rehearing denied.

BJJ

JLW

GGG

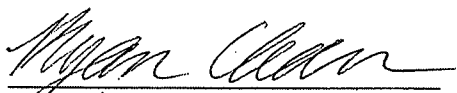
MRC

SJC

JTG

HUGHES, J., would grant rehearing.

Supreme Court of Louisiana


Deputy Clerk of Court
For the Court

Da

STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT

NO: KW 17-00369

Judgment rendered and mailed to all
parties or counsel of record on June 15,
2017.

STATE OF LOUISIANA
VERSUS
REBECCA JOY OWENS

RECEIVED JUN 19 2017

FILED: 04/18/17

On application of Rebecca Joy Owens for Writ of Review in No. 16-CR-0801 on the docket of the Sixteenth Judicial District Court, Parish of Iberia, Hon. Lewis H. Pitman, Jr.

David Greene

Counsel for:
Rebecca Joy Owens

Hon. M. Bofill Duhe
Janet Perrodin

Counsel for:
State of Louisiana

Lake Charles, Louisiana, on June 15, 2017.

WRIT GRANTED AND MADE PEREMPTORY: The trial erred in denying Defendant's motion to suppress Suboxone located in her purse inside her vehicle when she was stopped for traffic violations. The search was not an incident of the arrest for an unrelated offense, the officer failed to obtain Defendant's consent for the search, and he failed to advise her of her *Miranda* rights or advise her she could waive those rights. The Suboxone would not have inevitably been discovered absent Defendant's statement to the officer, who lacked probable cause to conduct the search. Accordingly, we vacate the trial court's ruling of February 13, 2017, grant the motion to suppress, and remand this matter to the trial court for further proceedings.

EAP

EAP

SJG

SJG

JDS Saunders, J., dissents and would deny the writ finding the officer conducted a valid search incident to the Defendant's arrest.

Body Camera
Footage