

WISCONSIN SUPREME COURT
WEDNESDAY, JANUARY 15, 2014
1:30 p.m.

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which reversed a Milwaukee County Circuit Court decision, Judge Rebecca F. Dallet, presiding.

2011AP2907-CR

[State v. Brown](#)

This Fourth Amendment case examines the legality of a traffic stop that started as a possible defective tail light violation, and ultimately resulted in charges of felon in possession of a firearm against Antonio D. Brown.

The Supreme Court reviews whether the Court of Appeals properly concluded that a tail lamp that is 66-percent functional is in “good working order” as required under Wis. Stat. § 347.13(1), and thus cannot serve as a basis for an officer’s probable cause to stop the vehicle.

The Supreme Court also may consider this case in light of the U.S. Supreme Court’s decision in Arizona v. Gant, 556 U.S. 332 (April 21, 2009). Gant holds that an officer who makes an arrest for a traffic offense can only search the vehicle incident to that arrest if (1) at the time of the search, the arrestee is unsecured and within arms’ reach of the passenger compartment, or (2) it is reasonable to believe that evidence related to the crime of arrest is located within the passenger compartment.

Some background: Police stopped Brown’s vehicle for a defective tail light. Brown himself was riding as a passenger in the backseat of his own vehicle. He was intoxicated and a friend was driving the car. There was also a woman riding in the front passenger seat.

Police testified they stopped the car on July 3, 2010 at about 9:30 p.m. in an area known for drug deals, just as the car was pulling over to park. Several squad cars were involved. Police officers testified they saw Brown make a movement, like he was kicking something under the car seat. All occupants of the vehicle were removed and handcuffed and sat on the curb. Police then shone a flashlight into the open car door, under the rear passenger seat and saw the gun. Although there was conflicting testimony about whether the butt of the gun was visible or not, this is not a “plain view” case. None of the individuals were cited or ticketed for the equipment violation.

Brown moved to suppress the gun on the grounds that the police lacked probable cause or reasonable suspicion to stop the vehicle. After detailed testimony about the vehicle’s rear lights and which particular bulbs may or may not have been lit at a given time, the circuit court denied Brown’s motion to suppress.

The circuit court found the driver’s testimony that he noticed that all of the lights on the 1977 Buick Electra were fully operational before the stop was not credible. The court found the officers’ testimony credible and that they were justified in stopping the vehicle. The court subsequently noted during a plea hearing that due to the operational design of the tail lights, it may have been difficult for officers to determine which bulbs inside the tail light panels were supposed to be lit at any given moment.

Brown pled guilty to possession of a firearm by a felon and was sentenced to five years of imprisonment, composed of three years of initial confinement and two years of extended supervision, concurrently with his extended-supervision-revocation sentence.

The circuit court denied Brown's motion for post-conviction relief, explaining that "[e]ven if the defendant had brought [§ 347.13(1)] to the court's attention [during the suppression hearing], the result would have been the same."

Brown appealed, contending that the officers' stop of the vehicle was predicated on a mistake of law because § 347.13(1) does not require that all of a vehicle's tail lights be lit. The Court of Appeals agreed and reversed.

A decision by the Supreme Court could clarify § 347.13(1) and whether an officer's observation of a partially operating tail lamp on a vehicle supplies probable cause to make a stop.