

FILED
COURT OF APPEALS
DIVISION II

09 SEP 29 PM 1:43

STATE OF WASHINGTON
BY Lori Smith
DEPUTY

**IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II**

STATE OF WASHINGTON,)	NO. 39094-9-II
Respondent,)	
vs.)	
)	STATE'S " <u>GANT</u> CONCESSION"
PHILIP PEDERSEN,)	ON APPEAL
Appellant.)	
_____)	

Michael Golden, Lewis County Prosecuting Attorney, representing Respondent State of Washington, by and through Lori Smith, Deputy Prosecuting Attorney, submits this response to Pedersen's opening brief on appeal.

Respondent hereby concedes that pursuant to this Court's recent ruling in State v. McCormick, 2009 WL 3048723, ___ P.3d ___ (2009), and the United States Supreme Court's opinion in Arizona v. Gant, ___ U.S. ____, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009), the search of the vehicle performed "incident to arrest" in this case was improper. Because the fruits of that now-illegal search were the only basis for Pedersen's conviction, Respondent agrees that this case must be remanded for dismissal.

RESPECTFULLY submitted this 28th day of September, 2009.

STATE'S GANT CONCESSION
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MICHAEL GOLDEN
LEWIS COUNTY PROSECUTING ATTORNEY

by: 

LORI SMITH, WSBA 27961
Deputy Prosecuting Attorney

DECLARATION OF MAILING

The undersigned declares under the penalty
Of perjury under the laws of the State of Washington
That on 9/28/09 a copy of this document was
served upon the Appellant by placing said document
in the United States mail, postage prepaid, addressed
to Appellant's attorney as follows:

BACKLUND & MISTRY
203 East Fourth Ave. Suite 404
Olympia, WA 98501

Dated this 28 day of September, 2009, at Chehalis, Washington.


