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## Vehicle Searches in the Wake of *Arizona v. Gant*

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In April 2009, *Arizona v. Gant* was decided by the U.S. Supreme Court.<sup>1</sup> To many state and federal courts and most of the law enforcement community, that decision marked a significant change to long-standing practices and assumptions regarding the nature and scope of warrantless vehicle searches conducted incident to lawful arrest. This case has been the subject of much commentary already. As the subsequent case law develops, it is useful to further consider the implications of this landmark case.

### Factual Background

Tucson, Arizona, police approached a house suspected of illegal drug activity after being notified through an anonymous complaint. Rodney Gant answered the door and spoke to the officers. Gant identified himself and explained that the homeowner was away, but was expected to return later that day. After leaving the house, officers performed background checks that revealed Gant's driver's license was suspended and there was an outstanding traffic court warrant for his arrest. When officers returned to the house later in the day, they encountered a man in back of the house and a woman in a car parked in front of the house. The woman consented to a car search and was arrested for drug paraphernalia, the man was arrested for providing false information, and both were secured in separate patrol cars.

Gant drove up to the house shortly thereafter, got out of the car and approached officers, who arrested him for driving with a suspended license and on the outstanding arrest warrant. Gant was handcuffed and secured in the back of a third police car.

After securing Gant in the police car, officers conducted a warrantless search of his car incident to the arrest and found a small bag of cocaine in a jacket on the backseat of the car. Drug charges were added to Gant's list of offenses.

Gant argued that the search was unconstitutional because he was handcuffed and secured in the back of a police car at the time. The trial court denied his motion, ruling that because Gant was in the car immediately preceding his arrest, the search was sufficiently related.

The appellate court reversed, saying that a warrantless search is justified only when officer safety or the danger of evidence destruction is at issue. Neither justification was present because Gant was restrained in the back of a patrol car and unable to access his car when the search took place. The Arizona Supreme Court agreed, and Arizona petitioned the U.S. Supreme Court to consider whether the circumstances authorized a warrantless search of the vehicle.

### Legal Background

The warrantless search of an arrested person and the area within his or her immediate control, conducted contemporaneously with the arrest, is a well-established exception to the Fourth Amendment search warrant requirement.<sup>2</sup> Courts recognize these searches as necessary to promote officer safety and prevent evidence destruction. The scope of a warrantless vehicle search incident to the arrest of an occupant is limited to a search of the passenger compartment and unlocked containers within that compartment.<sup>3</sup> In the 28 years between the *Belton* and *Gant* decisions, it became standard and accepted practice to conduct a warrantless search of a vehicle's interior incident to the arrest of a recent occupant, regardless of the arrestee's proximity to the vehicle at the time of the search.<sup>4</sup> By 2004, the practice was treated almost like an entitlement by most courts and the law enforcement community.<sup>5</sup>

### The *Gant* Decision

The U.S. Supreme Court began its analysis in *Gant* by restating the Fourth Amendment principle that every warrantless search is per se unreasonable, subject to very narrowly delineated exceptions.<sup>6</sup> The government's request for a bright-line rule permitting warrantless passenger compartment searches incident to every arrest of a vehicle occupant was quickly denied by the Court, which said that the notion "seriously undervalues the privacy interests" of motorists.<sup>7</sup>

The Court lamented that its decisions in *Belton* and *Thornton* had been subjected to overbroad application by the government and the judiciary, so it clarified both holdings. *Belton*, the Court said, merely established the parameters for

a valid warrantless search of a vehicle conducted incident to the arrest of an occupant. The Court distinguished *Thornton* on its unique facts, which justified a search of the vehicle incident to arrest based on the reasonable belief that evidence of the drug crime for which Thornton was arrested would be in his vehicle.

Unique contextual circumstances are the foundation of every narrowly delineated warrantless search and must also govern the nature and scope of those searches. The Court determined that the circumstances surrounding most routine traffic arrests rarely create an objectively reasonable basis to search a vehicle incident to that arrest. A vehicle occupant arrested and secured apart from the car does not typically pose an imminent danger to officer safety and is not capable of destroying any evidence that might be in the vehicle.

The Court's opinion in *Gant* holds that a vehicle search incident to the lawful arrest of an occupant is permitted only when (1) the arrested individual is unsecured and within reach of the passenger compartment at the time of the search; or (2) when "circumstances unique to the automobile context justify a search incident to arrest when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle."<sup>8</sup> The authority to conduct a warrantless personal search of an arrested individual and the area within that individual's immediate control remains undisturbed.

### Going Forward

Warrantless searches of motor vehicles are still constitutionally permitted in many circumstances, including the following:

- **Patdown searches:** Occupants of a vehicle subject to a valid traffic stop are seized for Fourth Amendment purposes and are not free to leave for the duration of the traffic stop.<sup>9</sup> If, during the course of a traffic stop, there are facts supporting reasonable suspicion that an occupant is dangerous and may gain immediate control of a weapon, protective patdown searches of that individual and the passenger compartment of the vehicle are permitted.<sup>10</sup> The scope of a personal patdown is limited to a cursory search of the subject's outer clothing for purposes of determining whether the subject is armed.<sup>11</sup> The scope of a vehicle patdown is limited to a cursory search of unlocked portions of the passenger compartment where a weapon could be placed.<sup>12</sup>

- **Vehicle search incident to arrest based on proximity:** A search of the interior of a vehicle incident to arrest is constitutionally permitted if it is conducted while an unsecured arrestee is within reach of the passenger compartment.<sup>13</sup> An officer may also conduct a warrantless search of a passenger compartment immediately prior to the arrest of an occupant if that occupant is within reach of the vehicle's interior at the time of the search.<sup>14</sup> Training officials should caution the exercise of proper personal safety practices in all settings; arrestees should not be unsecured and within reach of a vehicle simply to justify a search incident to arrest under *Gant*'s proximity rule.
- **Vehicle search incident to arrest based on reasonable belief of related evidence:** Consistent with *Thornton*, the *Gant* decision announced that the search of a vehicle interior incident to the arrest of an occupant is permitted if the officer reasonably believes evidence related to the offense of the arrest may be in that vehicle.
  - *Gant*'s "reasonable belief" standard is not equivalent to "probable cause." If that were so, it would create absurd results: an officer conducting a probable cause warrantless search of a car may search anywhere the evidence might be located, but an officer making an arrest of a vehicle occupant and who reasonably believes that related evidence is in the car would be required to meet a heightened legal standard just to conduct a search incident of the far more limited passenger compartment area.
  - The evidence required to establish reasonable belief is less than that required for probable cause. The "test of reasonableness under the Fourth Amendment is not capable of precise definition."<sup>15</sup> It is that which, based on the totality of circumstances, would lead a reasonable officer to believe evidence might be found in a vehicle recently occupied by the arrested individual.
  - When circumstances create reasonable belief that evidence may be found in a car related to the crime for which a vehicle occupant is arrested, then a warrantless search of the passenger compartment and unlocked containers within is permitted. For example, a warrantless search of a passenger compartment of a driver under the influence is permitted if the officer reasonably believes evidence of intoxicants may be in the vehicle. Likewise, if an officer arrests a vehicle occupant on probable cause of a recent burglary and theft, it is reasonable for the officer to believe that evidence of those crimes may be within the vehicle, justifying a search incident to arrest under the "reasonableness" standard announced in *Gant*.
- **Probable cause search under the automobile warrant exception:** When there is probable cause that evidence of a crime

is in a vehicle, an officer is authorized to conduct a warrantless search of that vehicle, including any place where the evidence might be found.<sup>16</sup>

- **Inventory search:** Evidence discovered pursuant to a noninvestigatory inventory search is admissible in a subsequent criminal proceeding. Inventory searches must be conducted in accordance with consistently applied policy and procedure and cannot be used as a subterfuge to conduct otherwise impermissible searches.<sup>17</sup> Officers should submit a copy of the agency inventory policy with any criminal case that results from evidence seized in an inventory search.
- **Consent search:** A search conducted based on the free and voluntary consent of a person with apparent authority to grant that consent is constitutionally permitted, irrespective of any legal or factual basis otherwise justifying a search or an arrest.<sup>18</sup>

### Conclusion

A warrantless search of a vehicle passenger compartment is constitutionally permitted only if the unsecured arrestee is within reach of the passenger compartment at the time of the search, or if unique factual circumstances create a reasonable belief that evidence related to the crime for which the occupant was arrested may be found in the vehicle. If either justification is not present, the vehicle may be searched only with a warrant or a clearly established warrant exception. ❖

### Notes:

- <sup>1</sup>*Arizona v. Gant*, 129 S. Ct. 1710 (2009).
- <sup>2</sup>*Weeks v. United States*, 232 U.S. 383 (1914); *United States v. Robinson*, 414 U.S. 218 (1973); *Chimel v. California*, 395 U.S. 752 (1969).
- <sup>3</sup>*New York v. Belton*, 452 U.S. 454 (1981).
- <sup>4</sup>*Belton*, 452 U.S. 454; *Thornton v. United States*, 541 U.S. 615 (2004).
- <sup>5</sup>*Thornton*, 541 U.S. at 624 (2004).
- <sup>6</sup>*Katz v. United States*, 389 U.S. 347 (1967).
- <sup>7</sup>*Gant*, 129 S. Ct. at 1720.
- <sup>8</sup>*Gant*, 129 S. Ct. at 1714.
- <sup>9</sup>*Arizona v. Johnson*, 129 S. Ct. 781 (2009); *Brendlin v. California*, 551 U.S. 249 (2007).
- <sup>10</sup>*Johnson*, 129 S. Ct. 781; *Michigan v. Long*, 463 U.S. 1032 (1983).
- <sup>11</sup>*Ybarra v. Illinois*, 444 U.S. 85 (1979); *Terry v. Ohio*, 392 U.S. 1 (1968).
- <sup>12</sup>*Long*, 463 U.S. at 1049-50; *Johnson*, 129 S. Ct. 781.
- <sup>13</sup>*Gant*, 129 S. Ct. 1710.
- <sup>14</sup>*Rawlings v. Kentucky*, 448 U.S. 98 (1980).
- <sup>15</sup>*Graham v. Connor*, 490 U.S. 386 (1989).
- <sup>16</sup>*Wyoming v. Houghton*, 526 U.S. 295 (1999); *Pennsylvania v. Labron*, 518 U.S. 938 (1996); *Acevedo v. United States*, 500 U.S. 565 (1991); *United States v. Ross*, 456 U.S. 798 (1982); *Carroll v. United States*, 267 U.S. 132 (1925).
- <sup>17</sup>*Florida v. Wells*, 495 U.S. 1 (1990); *Colorado v. Bertine*, 479 U.S. 367 (1987); *Michigan v. Thomas*, 458 U.S. 259 (1982); *South Dakota v. Opperman*, 428 U.S. 364 (1976); *Cady v. Dombrowski*, 413 U.S. 433 (1973).
- <sup>18</sup>*Florida v. Royer*, 460 U.S. 491 (1983); *United States v. Mendenhall*, 446 U.S. 544 (1980).