

MEMO

DATE: April 23, 2009
FROM: J.H.B. Wilson, Senior Attorney
RE: Arizona v. Gant

This memo is to clarify the holding of this case, especially in light of the sensationalistic news media coverage. All italics other than case names are mine.

Supreme Court of the United States, issued April 21, 2009.

Short version:

"After Rodney Gant was arrested for *driving with a suspended license, handcuffed, and locked in the back of a patrol car*, police officers searched his car and discovered cocaine in the pocket of a jacket on the backseat. *Because Gant could not have accessed his car to retrieve weapons or evidence at the time of the search*, the Arizona Supreme Court held that *the search-incident-to-arrest exception to the Fourth Amendment's warrant requirement*, as defined in *Chimel v. California*, (1969), and applied to vehicle searches in *New York v. Belton*, (1981), *did not justify the search in this case*. We agree with that conclusion.

* * *

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*."

Some important things to note –

- a. *Gant* applies *only* to this fact situation:
 1. The person arrested is in custody and unable to access the passenger compartment of the automobile
 2. There is no reason to think there is evidence of the crime (the crime for which the person is arrested) is in the car.

- b. *Gant* does NOT apply to inventories or to probable cause searches of an automobile.
 1. The Supreme Court opinion clearly shows that the state attempted to justify the search as being "incident to arrest" and that "no other exception to the warrant requirement applied to this case".
 2. Remember that an inventory must be based on a written departmental policy and that the policy must be followed. A proper 'inventory' is not even considered a 'search' under the Fourth Amendment and there is nothing in

- Gant* to suggest (or even hint) that police cannot inventory an impounded vehicle.
3. Motor vehicles may be searched if the officer has probable cause to believe there is contraband or evidence in the car. There is nothing in *Gant* to suggest (or even hint) that police cannot search a car based on probable cause.
- c. *Gant* has an unusual factual situation:
1. Police had contact with Gant earlier in the day at a home. They determined that his driver's license was suspended. Later that day officers saw Gant driving and arrested him for DUS. He was handcuffed and seated in the officer's car. Instead of impounding the car and inventorying it, the officers searched the vehicle and said it was "incident to arrest"
 2. Two other persons at the scene were arrested for unrelated reasons. Each of them was handcuffed and seated in an officer's car.
 3. There were five officers at the scene, and three arrestees. Since all of the arrestees were handcuffed and secured, it is difficult to believe that a reasonable officer would think that any of them would be able to access any weapons in Gant's car.
 4. There was no reason to believe that evidence of the crime for which Gant was arrested (driving while license was suspended) would be found in Gant's car.
- d. The Supreme Court's reasoning —
1. We start with the basic rule: "searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions" (citing *Katz v. United States* (1967)).
 2. In the case of *Chimel v. California* (1969) the Supreme Court held that a search 'incident to arrest' may only include the arrestee's person and the area within his immediate control, meaning "the area from which he might gain possession of a weapon or destructible evidence".
 3. In the *Belton* case the rule from *Chimel* was applied to automobiles. In *Belton* the court held that it was permissible to search the car 'incident to arrest' because the four arrestees were standing in reach of the car and could presumably access weapons or evidence in the car. *Gant* is factually different because the arrestee (Gant) clearly could NOT access weapons or evidence in the car.
 4. Some people have read *Belton* to mean that a search of the vehicle 'incident to arrest' may be done even if the arrestee has no access to the car, and this is an incorrect understanding of *Belton*.
- e. The holding of *Gant* is not a shocking new development. The appellate courts have not agreed on the proper rule. Cases in the Fifth, Tenth, and Ninth circuits have held that a search of a vehicle while the arrestee was handcuffed in the back

of a police car *is not* 'incident to arrest'. Other cases in the Sixth, Eighth, and Ninth circuits have held that a search under these circumstances *is* 'incident to arrest'. *Gant* simply clarifies the rule and settles the dispute.

- f. Does *Gant* mean that officers cannot search a car without a warrant?
- Not at all. Cars can be searched without a warrant in these situations:
1. When the officer has probable cause to believe that the car contains contraband or evidence.
 2. When the recent occupant of the car is arrested and there is reason to believe that evidence of the crime for which the person is arrested is in the car.
 3. When the contents of the car are inventoried pursuant to department impound policy.
 4. When the person arrested is in such close proximity to the car that the person could access evidence or weapons in the car.
- g. Shouldn't the 'bright line' rule of *Belton* be kept since it is much easier to administer?
1. Although a motorist's privacy interest in his vehicle is less substantial than in the home, the motorist's interest 'is nevertheless important and deserving of constitutional protection... It is particularly significant that *Belton* searches authorize police officers to search ... every purse, briefcase, or other container within (the car's passenger compartment). A rule that gives police the power to conduct such a search whenever an individual is caught committing a traffic offense, ... creates a serious and recurring threat to the privacy of countless individuals'.
 2. The *Belton* rule is not as clear-cut as the state suggests. *Belton* still leaves a lot of questions about how close in time and how close in proximity the arrest must be.
 3. Any impact on officer safety is limited. Even after *Gant* officers are allowed to 'conduct a vehicle search when an arrestee is within reaching distance of the vehicle or when it is reasonable to believe the vehicle contains evidence of the offense of arrest. Other established exceptions to the warrant requirement authorize a vehicle search under additional circumstances when safety or evidentiary concerns demand". Here are some examples
 - a. When the officer has 'a reasonable suspicion that an individual, whether or not the arrestee, is dangerous and might access the vehicle to gain immediate control of weapons'.
 - b. 'If there is probable cause to believe a vehicle contains evidence of criminal activity'
- h. What about § 1983 lawsuits?
- The Supreme Court specifically states: 'Because a broad reading of *Belton* has been widely accepted, the doctrine of qualified immunity will shield officers

from liability for searches conducted in reasonable reliance on that understanding’.

I. Summary

1. *Gant* has no effect on probable cause searches of vehicles or on inventories conducted pursuant to departmental policy.

2. If the person arrested is in handcuffs and in your police car, a search of the vehicle cannot be justified as ‘incident to arrest’. You must give another reason, like ‘probable cause’ or ‘inventory’ or a reasonable belief that evidence *of the crime for which the person was arrested* is in the car.

3. *Gant* is not a shocking new development. Whether *Belton* allows a search of a vehicle when the person arrested *is in handcuffs and in the officer’s car* has been hotly debated (and the subject of differing circuit court opinions) for the last 28 years.

4. *Gant* does not mean that the Supreme Court is against officer safety. If there are reasons that the officer feels unsafe (like the arrestee, or another person, might be dangerous and might access weapons in the car) the officer can search the car pursuant to the ‘incident to arrest’ rule.

5. Why all the fuss in the newspaper and on the TV News? How can I answer that? Part of it is that the newspaper relies on quotes from people who represent special interest groups instead of the language of the opinion, itself. Part of it is that a headline of “Supreme Court clarifies *Chimel* rule in vehicle searches incident to arrest” won’t sell as many papers as a headline of “Supreme Court wants police officers to be in danger”.

6. When you see these articles, go read the actual opinion before you make up your mind on what it means.