



# ROLL CALL REPORTER

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September 2014

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## Vehicle Searches Incident to Arrest – Applying *Arizona v. Gant*

**QUESTION:** If the suspect is not present, can a search of a vehicle's passenger compartment "incident to arrest" be justified only by the officer's reasonable belief that the vehicle might contain evidence of the offense of arrest?

**ANSWER:** Yes. But if the suspect is searched incident to arrest, and that search produces evidence of an unrelated crime, a search of the vehicle's passenger compartment may be justified as one for evidence related to that offense.

**CASE:** *Jamar Scribner v. State of Maryland*, Court of Special Appeals of Maryland  
Decided September 2, 2014

**The Surveillance:** On January 16, 2013, Detective Ryan Holby of the Annapolis City Police Department was conducting remote video surveillance of a house on Clay Street in preparation for executing a search and seizure warrant there. A video camera was located near the house, and Detective Holby was monitoring the video feed from the police station. The warrant authorized a search of the house for evidence related to "drugs, paraphernalia and distribution type [material]." The warrant did not mention any vehicles. Jamar Scribner was known to frequent the house, and, during the afternoon, Detective Holby saw Scribner come out of the house, smoke a cigarette, and go back inside. He also saw Scribner at other times walk across the street and frequently enter and exit the house. However, Detective Holby did not observe Scribner engage in any behavior that was indicative of drug trafficking. At 4:00 p.m., Scribner and a woman left the house, got into a Toyota Solara, and drove away. The woman was driving and Scribner was in the front passenger seat.

**Tracking the Vehicle:** Detective Holby and his partner, Detective Newton, drove from the police station in an effort to track the vehicle's whereabouts. Five to ten minutes later, Detective Holby spotted the Solara on Forest Drive in Annapolis, and followed it into the parking lot of a Safeway on that road. Scribner and the woman got out of the car and went into the Safeway. Detective Holby kept his eye on the Solara and no one approached the car or got in it while Scribner and the woman were in the store.

**The Arrest:** Detective Holby knew there was an open arrest warrant (second degree assault) for Scribner so he radioed for uniformed officers to respond to make the arrest. Scribner and the woman came out of the Safeway and began walking towards the Solara. As Scribner reached the front passenger door, the officers placed him under arrest. The car door was not opened during the arrest. The officers searched Scribner and found a small amount of U.S. currency and a clear plastic baggie of suspected crack cocaine. A crowd began to gather in the parking lot as the arrest was made, and, for safety reasons, Detective Holby asked Corporal Christopher Kintop to drive the Solara to a more secure location where it could be further searched. Scribner was transported from the scene and taken to the police station.

**The Vehicle Search and the Gun:** Corporal Kintop drove the Solara to the police station. Once Detective Holby arrived, they searched the Solara. The search took place within an hour of the arrest and no one entered the car during that time. There was a green bag on the floor in front of the passenger seat where Scribner had been sitting. Inside of the bag was a black revolver. The Solara did not belong to Scribner – it belonged to Monica Watkins, who was not a target of the search warrant.

**The Charges, the Motion to Suppress and the Conviction:** Scribner was charged with possession with intent to distribute cocaine, possession of cocaine, and possession of a regulated firearm after being convicted of a disqualifying offense. Prior to trial, Scribner moved to suppress the evidence, specifically the firearm discovered and seized during the search of the car. Scribner argued that the Supreme Court's 2009 decision in *Arizona v. Gant* precluded the search of the Solara. He contended that since he was arrested for assault – not for possession of crack cocaine – the officers lacked legal justification for searching the car for additional drug related evidence. The court denied Scribner's motion and he was found guilty and sentenced to eight years' imprisonment. Scribner appealed.

**The Appeal and the Decision:** In reaching its decision, the Court of Special Appeals first reviewed the decision in *Arizona v. Gant*. In that decision, the Supreme Court held that police may search a vehicle incident to a recent occupant's arrest *only if*: **(1) the arrestee is within reaching distance of the passenger compartment at the time of the search, or (2) it is reasonable to believe the vehicle contains evidence of the offense of arrest.** The Court then considered Scribner's arguments that he was not present when the search was made and that it was unreasonable for the officers to have concluded that there might be evidence in the car related to assault – the offense of arrest. The Court rejected Scribner's arguments because the record showed that Scribner had been searched incident to arrest and that the search produced the clear plastic baggie of what the officer reasonably believed to be crack cocaine. When the officer found the suspected crack cocaine, he had probable cause to believe Scribner had committed a drug offense. Based on that probable cause, Scribner was later charged with various drug offenses. So, the Court concluded that, as to the vehicle search, it made no difference that Scribner was initially placed under arrest for assault. When he was found to be in possession of cocaine, the police had probable cause to arrest him for a second offense. Both offenses were encompassed in the act of arrest itself. A “separate” arrest for drug possession was not needed. As such, the officers reasonably concluded that the Solara might contain additional evidence related to the crime of possession of cocaine. Therefore, the search was justified under *Arizona v. Gant* and Scribner's conviction was upheld.

**NOTE:** If the vehicle search had been conducted while Scribner was still standing near the car, the search of the passenger compartment would have been allowed on that basis. But, since the car was moved before it was search, that justification was not available. It was also important in this case that the search of the car took place not long after the arrest and that no one had entered the car while it was in police custody. In other words, no one had an opportunity to put anything in the car at the scene or after it was brought to the police station.

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