



LGIT'S ROLL CALL REPORTER

MAY 2009

A Police Officer Can Search a Vehicle's Passenger Compartment Incident to a Recent Occupant's Arrest Only if: (1) the Officer Reasonably Believes That the Vehicle Contains Evidence of the Crime for Which the Occupant was Arrested *OR* (2) the Arrestee is Unsecured and Within Reaching Distance of the Vehicle at the Time the Search is Conducted

QUESTION: Is an officer automatically entitled to search a vehicle's passenger compartment (and the containers in it) incident to the arrest of a recent occupant?

ANSWER: No. There is no entitlement to search the passenger compartment incident to every arrest. Going forward, the search of the passenger compartment can be justified only if the arrest is for the type of crime for which an officer could reasonably expect to find evidence in the car *or* the arrestee is unsecured and actually within reaching distance of the passenger compartment when the search is made.

CASE: *Arizona v. Gant*, Supreme Court of the United States, Decided April 21, 2009

In *Arizona v. Gant*, the Supreme Court attempted to reconcile two important concerns under the Fourth Amendment: (1) the justifications for the search incident to arrest and (2) how those justifications prevent or allow an officer to search a vehicle's passenger compartment incident to the arrest of a recent occupant.

The facts in the case established that on August 25, 1999, Tucson police officers Griffith and Reed went to a residence where they had reason to believe drugs were being sold. They knocked on the door and Rodney Joseph Gant opened it. The officers asked him if they could speak with the owner. Gant said he expected the owner to return later. The officers left and conducted a records check which revealed that Gant's driver's license had been suspended and that there was an outstanding warrant for his arrest for driving with a suspended license. When the officers returned to the house later that evening, they found a man near the back of the house and a woman in a car parked in front of it. After a third officer arrived, they arrested the man for providing a false name and the woman for possession of drug paraphernalia. Both arrestees were handcuffed and secured in separate patrol cars. At that point, Gant drove up to the house. The officers recognized his car as it entered the driveway and Officer Griffith confirmed that it was Gant behind the wheel. Gant parked at the end of the driveway, got out, and shut the door. Officer Griffith, who was about 30 feet away, called to Gant and they approached each other. They met about 10 to 12 feet from Gant's car. Officer Griffith immediately arrested Gant and handcuffed him. Gant was then locked in the backseat of a backup unit. Two officers then searched Gant's car and found a gun and a bag of cocaine in the pocket of a jacket on the backseat.

Gant was charged with possession of a narcotic drug for sale and possession of drug paraphernalia. He moved to suppress the evidence seized from his car on the ground that the warrantless search violated the Fourth Amendment. Gant argued that the search of his vehicle was unconstitutional because, at the time it was searched, he posed no threat to the officers and he was arrested for a traffic offense for which no evidence could be found in his vehicle. When asked at the suppression hearing why the search was conducted, Officer Griffith responded: "Because the law says we can do it." The trial court denied Gant's motion on the ground that the search of the vehicle was permissible as a search incident to arrest. Gant was found guilty and imprisoned. He appealed.

After the Arizona Supreme Court reversed the decision of the trial court, the Supreme Court of the United States agreed to hear the case. The Supreme Court agreed with the Arizona Supreme Court that Gant's conviction must be overturned. In reaching this conclusion, the Court first looked to its 1969 decision in *Chimel v. California*, in which it said that a search incident to arrest is designed to (1) protect arresting officers and (2) to safeguard evidence. As such, the Court held in *Chimel* that a search incident to arrest could include the arrestee's person and the area within the arrestee's immediate control-construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence. The *Chimel* case didn't deal with the issue of what an officer can or can't do in circumstances where the arrestee is handcuffed and locked in a patrol car. Obviously, in that situation, the arrestee can no longer reach into the area the officers intend to search. Consequently, the two justifications underlying a search incident to arrest cease to exist.

But what about the Supreme Court's 1981 decision in *New York v. Belton*? In *Belton*, the Court upheld the search of jacket found on a vehicle's backseat as a valid search incident to arrest, despite the fact that the vehicle's four occupants had been taken out of the car and "split-up" prior to the search. In that case, however, it was a lone officer who stopped a speeding car in which Belton was one of four occupants. When the officer smelled burnt marijuana and observed an envelope marked "Supergold", he ordered the occupants out of the vehicle, placed them under arrest and without handcuffing them, separated them and made them stand in four different spots near the highway. He then searched the passenger compartment and found cocaine in the pocket of a jacket on the backseat. Since 1981, courts, prosecutors, and law enforcement officers have interpreted the *Belton* case to allow a vehicle search incident to arrest of a recent occupant even when there was no possibility that the arrestee could gain access to the vehicle.

Now, 28 years later in *Arizona v. Gant*, the Supreme Court has said that this widespread interpretation of *Belton* is too broad, if not outright wrong. Instead, the Court said that *Belton* was intended to allow the search of the passenger compartment incident to arrest only when the arrestee is unsecured and actually within reaching distance of the passenger compartment. Since Gant was handcuffed and secured in a patrol car at the time of the search of the passenger compartment, the search violated the Fourth Amendment. However, because of the circumstances unique to motor vehicles, the Court said that this strict interpretation of *Belton* will not apply in every case. To the contrary,

the Court said that *if it is reasonable for the arresting officer to believe evidence relevant to the crime of arrest might be found in the vehicle, the officer can still search the passenger compartment incident to the arrest.* This is so even if the arrestee is handcuffed and/or in a police car at the time of the search. This justification didn't exist in the *Gant* case because Gant was arrested only for a traffic violation. In other words, because a traffic offense was the "crime of arrest," it was unreasonable for the officer to search the car. If, however, Gant had been arrested for a drug or weapons offense, the search would have been upheld because it would have been reasonable for the arresting officer to believe that evidence relevance to those crimes might be found in the car. Again, the justification to search a car incident to arrest is dependent solely upon the crime of arrest. It is not restricted by the location of the suspect at the time of the search or whether or not the suspect is secured.

NOTE: It is important to understand that the *Gant* case is limited only to searches *incident to arrest.* The other exceptions to the warrant requirement carved out for vehicles are simply not impacted by this decision.

By John F. Breads, Jr., Director of Legal Services, Local Government Insurance Trust

This publication is designed to provide general information on the topic presented. It is distributed with the understanding that the publisher is not engaged in rendering legal or professional services. Although this publication is prepared by professionals, it should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.