



**LGIT'S ROLL CALL REPORTER  
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**ARIZONA V. GANT APPLIED FOR FIRST TIME BY THE UNITED STATES  
COURT OF APPEALS FOR THE FOURTH CIRCUIT**

**QUESTION:** Under *Arizona v. Gant*, can a police officer search a vehicle incident to the arrest of the driver for driving on suspended license?

**ANSWER:** No. If the driver has been handcuffed and secured in the patrol car, the offense of driving on a suspended license does not give the arresting officer a reasonable basis to believe evidence related to the suspension would be found in the car.

**CASE:** *United States v. Majette*, United States Court of Appeals  
for the Fourth Circuit, Decided April 30, 2009 (Unpublished)

In a case decided just nine days after the Supreme Court's decision in *Arizona v. Gant*, the United States Court of Appeals for the Fourth Circuit had the opportunity to apply that decision to one of its own cases. The facts in *United States v. Majette* established that on June 5, 2006, Tony Majette was stopped by Blacksburg (Virginia) Police Officer Michael Czernicki for driving a car with impermissibly dark window tint. When Officer Czernicki asked Majette for his driver's license and registration, Majette admitted that his license had been suspended. Officer Czernicki then checked with his dispatcher, who confirmed the license suspension and reported that Majette had three prior adult convictions for driving under a suspended license and fifteen prior suspensions of his driving privileges. Based on this information, Officer Czernicki decided to arrest Majette rather than issue a summons. The officer ordered Majette out of the car, handcuffed him, and secured him in the back seat of the patrol car. The officer then returned to Majette's car and searched the passenger compartment. During the search, he found two baggies containing cocaine base, one between the passenger seat and passenger door and one behind the passenger seat. The officer then found a Mason jar behind the driver seat that contained a tiny amount of a leafy substance that smelled like marijuana. Officer Czernicki also found a set of digital scales underneath the passenger seat.

Majette was indicted by a federal grand jury on one count of possession with intent to distribute five grams or more of cocaine base. He moved to suppress the evidence seized from his car. The search was upheld as lawful, being incident to Majette's valid arrest. Majette went to trial and was convicted. He appealed to the United States Court of Appeals for the Fourth Circuit claiming that the search of his car violated the Fourth Amendment. When the case was argued before that Court in January 2009, it was noted that the outcome might be controlled by the impending decision of the Supreme Court in

*Arizona v. Gant*. Consequently, the United States Court of Appeals did not rule until *Gant* was decided on April 21, 2009. In light of that decision, the federal appeals court vacated Majette's conviction. It did so because of the "new" interpretation of the *Belton* rule announced in *Gant*. This "new" interpretation means that a police officer cannot automatically search a vehicle incident to an occupant's arrest after the arrestee has been secured and cannot access the interior of the car. An officer can, however, still search a vehicle, regardless of the location of the arrested occupant, if the officer reasonably believes that evidence related to "the offense of arrest" might be found in the vehicle.

Since Majette was handcuffed and secured in the patrol car when his car was searched, the court looked to the "offense of arrest" to see if it justified the search. Because Majette had been arrested for only for driving offenses, the court found it did not. The court said: "[T]he officer would not have had a reasonable basis to believe he would find evidence of Majette's license suspension . . . within the [car's] passenger compartment." These circumstances led the court of hold that the search of Majette's car violated the Fourth Amendment.

**NOTE:** The fallout from the decision in *Arizona v. Gant* is just beginning to be felt. Consequently, it is imperative that officers grasp the essence of the holding in *Gant*. That holding is as follows: **a police officer who arrests a vehicle occupant or recent occupant may search the passenger compartment if (1) the arrestee is within reaching distance of the vehicle at the time of the search or (2) the officer has reason to believe that the vehicle contains evidence of the offense for which the occupant is arrested ("the offense of arrest")**. While the first criterion implicates officer safety, no officer should disregard his or her safety in order to justify a vehicle search incident to arrest. As to the second criteria, in the words of Supreme Court Justice Samuel Alito, it is "certain to confuse law enforcement officers and judges for some time to come." This is because the rule announced in *Gant* requires officers making roadside arrests to determine whether there is reason to believe that the vehicle contains evidence of the crime of arrest. What this rule permits in a variety of situations is entirely unclear and will have to be determined case by case, judge by judge. For example, if an officer arrests some but not all of the occupants of a car, is a search of the passenger compartment justified on the ground that the occupants who are not arrested could gain access to the car and retrieve a weapon or destroy evidence? Or what if the arresting officer fears that persons who were not passengers in the car might attempt to retrieve a weapon or evidence from the car while the officer is still on the scene? And, what if the occupant is arrested for an open warrant that was issued years before--if the warrant were for a narcotics or weapons violation, is it be reasonable for the arresting officer to believe that the vehicle presently contains evidence related to the warrant? Finally, if a defendant is arrested pursuant to a warrant, can the officer search the vehicle for evidence of other offenses for which a warrantless arrest could have been made? All of these, and many other questions, are important and, in the absence of guidance from the courts, officers and departments must rely upon the directives from their legal advisors and States' attorneys.

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