

The Impact of ARIZONA V. GANT: Limiting the Scope of Automobile Searches?

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THE SCOPE of a police officer's search of an automobile incident to the arrest of an occupant has been somewhat limited by a recent U. S. Supreme Court decision. The Court held in *Arizona v. Gant*,¹ that the search incident to arrest exception to the warrant requirement did not apply to the facts of this case and held that a vehicle search is not authorized incident to a recent occupant's arrest after the arrestee has been secured and cannot access the interior of the vehicle.

While investigating Gant for alleged drug activity, Tucson police officers learned 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. Officers observed Gant drive by, park and then get out of his automobile and shut the door. While about 30 feet apart, one officer called to Gant and they approached each other meeting 10 to 12 feet from Gant's car. Gant was then arrested and handcuffed.

Incident to his arrest, the officers then searched Gant's car, one finding a gun and the other a bag of cocaine in the pocket of a jacket on the backseat.

Because Gant was handcuffed and could not access the interior of the car to retrieve weapons or evidence at the time of the search, the Court found that the search incident to arrest exception did not justify the search in this case.

A divided Court (4-1-4) held (Stevens, J.) generally that a vehicle search incident to a recent occupant's arrest is not authorized after the arrestee has been secured and cannot access the passenger compartment of the vehicle. This is seemingly contrary to prior opinions in *Thornton v. United States*² and *New York v. Belton*.³ Applying the safety and evidentiary justifications underlying *Chimel v. United States*⁴ to limit *Belton*, much of what has been taught to and practiced by law enforcement officers regarding search incident to arrest is no longer valid. Gone is the more open and generous license to law enforcement officers in their ability to search the passenger compartment of a vehicle or any containers therein simply because they have arrested an occupant or recent occupant of the vehicle.

Yet, the opinion notes that *Gant* is consistent with the holding in *Thornton* and follows the suggestion of Justice Scalia's concurring opinion therein.⁵ *Thornton* had expanded *Belton* to allow for searches of the passenger compartment of a vehicle that is contemporaneous incident to arrest even when the officer did not make contact until that person had left the vehicle. The rationale of allowing a search of the entire passenger compartment, regardless of the manner of contact with the arrestee, was in the search for a clear rule. Still, it is

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one based on ensuring officer safety and preserving evidence. Justice Scalia's concurring opinion in *Thornton* argued that if *Belton* searches were justifiable, it was because of the safety and evidentiary issues, not simply because the vehicle might contain evidence relevant to the crime for which he was arrested.

While at the same time limiting an officer's ability to search the vehicle incident to arrest based upon proximity and access for the purposes of officer safety and evidentiary safekeeping, the Court also indicated that there may be circumstances unique to the automobile context to justify a search incident to arrest

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The Court stated that not only is an officer permitted to "conduct a vehicle search when an arrestee is within reaching distance of the vehicle" but also if "it is reasonable to believe the vehicle contains evidence of the offense or warrant." (emphasis added) This allows for searches incident to arrest where the vehicle is outside of the arrestee's reach based upon reasonable belief rather than probable cause. Assuming that the defendant had been stopped and subsequently arrested for Driving Under the Influence of Alcohol (DUI), the officer would be justified in searching for evidence of

the consumption of alcohol if the officer had a "reasonable" belief such evidence might be found. A search might also be permitted in the case of the arrest of the occupant of the vehicle on an outstanding warrant so long as the officer had reasonable belief that evidence of the crime charged in the warrant might be found in the vehicle.

Going on, the Court lists certain exceptions that still apply and are available to officers.

- **Frisk for Weapons.** Permitting officers to search a vehicle's passenger compartment when there is reasonable suspicion that an individual, whether or not the arrestee, is dangerous and might access the vehicle to gain immediate control of weapons.⁶ This flows from the rationale for frisking a suspect for weapons.⁷

- **Probable Cause of Evidence of Crime.** Where there is probable cause to believe a vehicle contains evidence of criminal activity.⁸ Of particular interest is the mention that this allows for searches for evidence relevant to offenses other than the offense of arrest, and the scope of the search authorized is broader. This exception does not rely upon an arrest for justification.

- **Protective Sweep.** Where safety or evidentiary interests would justify a search, such as a limited protective sweep of those areas in which an officer reasonably suspects a dangerous person may be hiding.⁹ From a vehicle perspective, this exception may be applicable when dealing with larger vehicles such as multi-passenger vans, recreational vehicles, motor homes, buses and the like.

Although not mentioned in the opinion, other exceptions should also still apply.

- **Consent.** The easiest of all exceptions to the search warrant requirement is the one of consent. When the defendant makes a knowing and intelligent waiver of his rights, the officer may search without a warrant.¹⁰ This consent, however, may be limited in scope.¹¹

- **Inventory.** So long as the officer's department has a written policy providing for it, the officer may inventory the contents of a vehicle prior to it being

impounded and towed for the purpose of safekeeping and avoiding claims of loss.¹²

- **Plain View.** In situations where the officer is in a position in which he is lawfully entitled to be, anything plainly visible as being evidential or contraband falls under this well-established exception.¹³
- **Abandonment.** If the vehicle has been abandoned, then the privacy interests normally protected by the 4th Amendment have also been abandoned and the officer is free to search the vehicle.¹⁴
- **Sobriety Checkpoints.** Police may still conduct appropriate sobriety checkpoints to detect impaired drivers but not for general criminal activity.¹⁵

It would also be appropriate to note that quite often vehicles are part of a crime scene, such as in vehicular homicide or DUI with Death cases. Care should be taken to remember that there is no crime scene exception for search warrants.

- **Exigent Circumstances.** There may be circumstances that arise to the level permitting a search under this exception, but caution should always be used in relying upon it. Only in the direst of circumstances such as hot pursuit, imminent destruction of evidence or danger to a third person might this be applicable.¹⁶

Some activities do not rise to the level of a search and officers should not worry about this case having changed how they handle these situations. For example, dog sniffs of vehicles during an otherwise lawful

stop are not affected. The dog sniff itself is not a search and as long as it is done during the pendency of a lawful stop and not beyond, there is no issue.¹⁷

It would also be appropriate to note that quite often vehicles are part of a crime scene, such as in vehicular homicide or DUI with Death cases. Care should be taken to remember that there is no crime scene exception for search warrants.¹⁸ Reliance purely upon the motor vehicle exception may not be workable when the vehicle is no longer mobile because of the crash. Some evidence within the vehicle, such as crash data recorders or some physical evidence might be subject to the exigent circumstances exception if the officer has a reasonable belief that the evidence may otherwise be lost. Officers are allowed to secure a crime scene pending the issuance of a search warrant.¹⁹

In short, the holding in *Arizona v. Gant* is not an overly burdensome one on law enforcement. While it certainly limits the prior practices of officers conducting wide-ranging searches incident to an arrest of an occupant of a motor vehicle, it does still permit those searches under more defined circumstances. Perhaps the most important requirement to come out of this case is the need for officers to articulate, and prosecutors to elicit, with great care and detail, the basis for the search.

ENDNOTES

- ¹ 556 U.S. ___, No. 07-542 (2009).
- ² 541 U.S. 615 (2004).
- ³ 453 U.S. 454 (1981).
- ⁴ 395 U.S. 752 (1969).
- ⁵ *Id.*, 541 U.S. at 632.
- ⁶ *Michigan v. Long*, 463 U.S. 1032 (1983).
- ⁷ *Terry v. Ohio*, 392 U.S. 1 (1968).
- ⁸ *United States v. Ross*, 456 U.S. 798 (1982).
- ⁹ *Maryland v. Buie*, 494 U.S. 325 (1990).
- ¹⁰ *Schneekloth v. Bustamonte*, 412 U.S. 218 (1973).
- ¹¹ *Florida v. Jimeno*, 500 U.S. 248 (1991).
- ¹² *South Dakota v. Opperman*, 428 U.S. 364 (1976).
- ¹³ *Coolidge v. New Hampshire*, 403 U.S. 443 (1971).
- ¹⁴ *California v. Greenwood*, 486 U.S. 35 (1988).
- ¹⁵ *Michigan Dept. of State Police v. Sitz*, 469 U.S. 444 (1990), *Indianapolis v. Edmund*, 531 U.S. 32 (2000).
- ¹⁶ *Welsh v. Wisconsin*, 466 U.S. 740 (1984), *Schmerber v. California*, 384 U.S. 757 (1966).
- ¹⁷ *Illinois v. Caballes*, 543 U.S. 405 (2005).
- ¹⁸ *Mincey v. Arizona*, 437 U.S. 385 (1978), *Flippo v. West Virginia*, 528 U.S. 11 (1999).
- ¹⁹ *Thompson v. Louisiana*, 469 U.S. 17 (1984).