

SPECIAL LEGAL BULLETIN

PROVIDING HIGHWAY SAFETY AND SECURITY THROUGH EXCELLENCE IN SERVICE, EDUCATION, AND ENFORCEMENT

ELECTRA THEODORIDES-BUSTLE, EXECUTIVE DIRECTOR

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United States Supreme Court

Searches incident to arrest are limited.

Rodney Gant was arrested in his driveway for driving on a suspended license, handcuffed, and locked in a patrol car before officers searched his car and found cocaine in a jacket pocket. The Arizona trial court denied his motion to suppress the evidence, and Gant was convicted of drug offenses. The Arizona Supreme Court found the search unreasonable and reversed the trial court.

The U.S. Supreme Court agreed with the Arizona Supreme Court. Up until now, law enforcement has been able to search a vehicle, including all containers, incident to arrest whenever an occupant of the vehicle is arrested. In Arizona v. Gant, 2009 WL 1045962 (2009), the Court distinguished New York v. Belton, 453 U. S. 454 (1981), and held that once a scene is secure and there is no probable cause to believe evidence of the crime charged may

be found in the vehicle, law enforcement may not search the vehicle “incident to arrest”. The Court further held that Chimel v. California, 395 U. S. 752 (1969), requires that a search incident to arrest be justified by either the interest in officer safety or the interest in preserving evidence. Since the circumstances of Gant’s arrest implicated neither of those interests, the Supreme Court agreed the search was unreasonable.

This case somewhat limits when law enforcement may search a vehicle “incident to arrest”. Law enforcement may search the passenger compartment of a vehicle incident to a recent occupant’s arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest.

This is a major change from current law enforcement practices. It has become standard law enforcement practice to search the vehicle of a recent occupant who was arrested. The Supreme Court explained that this was not how Belton should have been interpreted and that Belton

should be narrowly applied to only “permit an officer to search a vehicle when safety or evidentiary concerns demand.”

In other words, search incident to arrest can only be made to secure the safety of the officer or if looking for evidence of the crime charged. In this case, the driver was handcuffed, locked in the patrol car and was arrested for driving with a suspended license while parked in his driveway. There was no officer safety issue. Since the crime committed was driving on a suspended license, there would be no expectation that evidence of that crime would be found in the car. Therefore, neither of the Belton exceptions are applicable and any search of the motor vehicle would be unreasonable.

In a footnote, Justice Stevens stated:

Because officers have many means of ensuring the safe arrest of vehicle occupants, it will be the rare case in which an officer is unable to fully effectuate an arrest so that a real possibility of access to the arrestee’s vehicle remains.

Since Gant was arrested in his driveway, the court did not discuss inventory of impounded vehicles. The Florida Highway Patrol has a written policy requiring that an

inventory be conducted of all vehicles which are impounded. Since most of the Florida Highway Patrol’s arrests are made on highways, the inventory of those vehicles would still be appropriate when towing the vehicle is required.

Contact the Office of General Counsel or your local State Attorney if you have any questions.

Arizona v. Gant, 2009 WL 1045962 (2009).



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