



# POLICE / PROSECUTOR UPDATE

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The United States Supreme Court, in the case of Arizona v. Gant, has greatly restricted the law allowing the search of a vehicle incident to the arrest of an occupant of the vehicle.

We'll first take a quick look at the historical development of the rule. In 1969, the Court in the case of Chimel v. California ruled that when an arrest is made, the arresting officer may conduct a search of the person arrested and the area within his immediate control in order to remove any weapons that might be used to resist arrest or to escape and also search for and seize any evidence in order to prevent its concealment or destruction.

Then in 1981, in New York v. Belton, the Court held that when a police officer has made a lawful custodial arrest of an occupant of a vehicle, he may, as a contemporaneous incident of that arrest, search the passenger compartment of the vehicle. The police could also examine the contents of any containers found within the passenger compartment. As the law developed over the years, the vehicle could be searched even though the arrestee had been handcuffed and placed in a squad car or the scene had been otherwise secured.

The Supreme Court reiterated that the search incident to arrest exception to the search warrant requirement is limited to a search of an arrestee's person and the area "within his immediate control," meaning the area from within which he might gain possession of a weapon or evidence. The Court then noted that over the years lower courts have allowed a vehicle search incident to the arrest of a recent occupant even if there is no possibility the arrestee could gain access to the vehicle at the time of the search. In the Court's view, these lower court decisions treated the ability to search a vehicle incident to the arrest of an occupant "as a police entitlement" rather than an exception to the

warrant requirement. As a consequence, if there is no possibility that an arrestee can reach into the area that law enforcement officers seek to search, the Court concluded that the justification for the search incident to arrest exception is absent and the rule does not apply.

The Supreme Court then issued its twin holdings: (1) police are authorized to search a vehicle incident to an occupant's arrest *only* when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search and (2) a search incident to a lawful arrest is justified when it is reasonable to believe that evidence relevant to the crime for which the arrest was made might be found in the vehicle. It seems clear that this decision will prohibit vehicle searches in many situations authorized before *Gant*.

*Gant* was arrested in his driveway for driving while suspended after police, who knew he was suspended, had observed him driving. He was handcuffed and secured in a patrol car before his vehicle was searched. The Court said neither the possibility of access nor the likelihood of discovering offense-related evidence authorized the search. He was obviously not within reaching distance of his car. Also, Driving While Suspended is a crime for which police could not expect to find evidence in the car. The search was thus unreasonable.

Other warrant exceptions are still available. During an investigatory stop of a vehicle, an officer can search the passenger compartment of the vehicle when he has reasonable suspicion that the suspect is dangerous and could gain immediate control of weapons. Also, if there is probable cause to believe that a vehicle contains evidence of criminal activity, police may search any area of the vehicle in which the evidence might be found. Finally, nothing in the *Gant* opinion affects the law with regard to impoundment/inventory of a vehicle.

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