

The United States Supreme Court's Ruling in *Arizona v. Gant*

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April 26, 2009

On April 21, 2009, the United States Supreme Court issued a ruling in *Arizona v. Gant* that significantly restricts an officer's authority, based on the theory of search incident to arrest, to conduct a search of the passenger compartment of a vehicle after arresting an occupant or a recent occupant. The Court ruled that officers may search a vehicle incident to arrest only if (1) the arrestee is unsecured and within reaching distance of the passenger compartment when the search is conducted; or (2) it is reasonable to believe that evidence relevant to the crime of arrest might be found in the vehicle. This memorandum discusses the ruling and its impact on law enforcement practices and the introduction of evidence in court. The text of the *Gant* opinion is available at <http://straylight.law.cornell.edu/supct/html/07-542.ZS.html>.

I. The Court's Opinion and Ruling

Officers learned through a records check that Rodney Gant's driver's license was suspended and there was an outstanding warrant for his arrest for driving with a suspended license. Officers saw Gant driving a car as it entered a driveway. Gant parked his car, got out, and shut the door. An officer, who was about thirty feet away, called to Gant. They approached each other, meeting approximately ten to twelve feet from Gant's car, where the officer arrested and handcuffed him. (Other people at the scene were arrested for various offenses and secured in patrol cars with handcuffs.) Officers placed Gant in the backseat of a patrol car. Officers then searched the interior of his car, and a gun and cocaine were found there. Gant was found guilty of possession of a narcotic drug for sale and another drug-related offense.

The Court discussed its ruling in *Chimel v. California*, 395 U.S. 752 (1969), which authorized officers to search, as incident to arrest, the arrestee's person and the area within the arrestee's immediate control, which is the area from which the arrestee might gain possession of a weapon or destructible evidence. The Court then discussed its ruling in *New York v. Belton*, 453 U.S. 454 (1981), which applied *Chimel* in the context of vehicles. *Belton* ruled that an officer who lawfully arrests an occupant of a vehicle may, as a contemporaneous incident of that arrest, search the passenger compartment of the vehicle and any containers therein.

The Court noted that *Belton* has been widely construed in appellate court cases to allow a vehicle search incident to the arrest of an occupant even if there is no possibility that the arrestee could gain access to the vehicle when the search was conducted—for example, when an arrestee is handcuffed and secured in a patrol car. The Court rejected this interpretation of *Belton* as incompatible with the justifications underlying *Chimel* (preventing an arrestee from gaining possession of a weapon or destructible evidence).

The Court ruled that the *Chimel* rationale authorizes officers to search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment when the search is conducted. (The Court stated in footnote four that “[b]ecause 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.”)

The Court authorized another ground for a search even though it admitted that the ground does not follow from *Chimel*. The Court stated that a search also is justified when it is reasonable to believe that evidence relevant to the crime of arrest might be found in the vehicle.¹ The Court noted that in many cases, such as when a recent occupant is arrested for a traffic offense, there will be no reasonable basis to believe the vehicle contains relevant evidence. But in others, including *Belton* and *Thornton v. United States*, 541 U.S. 615 (2004) (*Belton* rule applies when vehicle occupant had just left vehicle before officer arrived), the offense of arrest will allow searching the passenger compartment of an arrestee's vehicle and any containers therein.² Officers in both cases had made arrests for drug offenses and then searched the vehicles' passenger compartments. In *Belton*, an officer smelled burnt marijuana in the vehicle. In *Thornton*, the officer had seized illegal drugs from the defendant's person.

The Court applied its ruling to the facts of the case before it and concluded that neither the possibility of Gant's access to weapons or destructible evidence nor the likelihood of discovering offense-related evidence authorized the search of Gant's vehicle. Unlike *Belton*, which involved a single officer confronted with four unsecured arrestees, the five officers in this case outnumbered Gant and two other arrestees, all of whom had been handcuffed and secured in patrol cars before the search was conducted. Gant clearly was not within reaching distance of his car at the time of the search. An evidentiary basis for the search was also lacking. Gant was arrested for driving with a suspended license, an offense for which officers could not expect to find evidence in the passenger compartment of Gant's car. The Court ruled that the search of Gant's vehicle was unreasonable under the Fourth Amendment.

The Court noted that other established exceptions to the warrant requirement authorize a vehicle search under additional circumstances involving safety or evidentiary concerns, including: (1) searching a vehicle's passenger compartment when an officer reasonably suspects that a person, whether or not an arrestee, is dangerous and might access the vehicle to gain immediate control of weapons, citing *Michigan v. Long*, 436 U.S. 1032 (1983) (commonly known as a “car frisk”); (2) searching any area of a vehicle when there is probable cause to believe it may contain evidence of criminal activity, citing *United States v. Ross*, 456 U.S. 798 (1982); and (3) searching when other circumstances in which safety or evidentiary interests would justify the search.³ Thus, *Gant* does not affect the availability of other Fourth Amendment justifications to search a vehicle.

II. “Reasonable to Believe” Standard in Court's Opinion

As discussed above, under *Gant* an officer is authorized, as a search incident to arrest, to search a vehicle if it is “reasonable to believe” that evidence relevant to the crime of arrest might be found in the vehicle. Does that require “probable cause,” “reasonable suspicion,” or some lesser standard of reasonableness under the Fourth Amendment? The Court did not offer an

¹ This ground was derived from Justice Scalia's concurring opinion in *Thornton v. United States*, 541 U.S. 615, 629-31 (2004).

² This may explain why the Court did not specifically overrule *Belton* and *Thornton*.

³ The Court referenced *Maryland v. Buie*, 494 U.S. 325 (1990) (protective sweep of house after an arrest when there is reasonable suspicion that a dangerous person may be hiding there), which is not directly relevant to a vehicle search but whose rationale might indirectly support a search of a vehicle for a safety reason.

explanation. The term appears in Justice Scalia’s concurring opinion in *Thornton v. United States* (“I would therefore limit *Belton* searches to cases where it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle”).⁴ Neither his concurring opinion nor his cited cases provide a definitive answer. The Court used a similar term, “reason to believe,” in *Payton v. New York* (“for Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within”) without defining it.⁵ Federal appellate courts have split on its meaning, but a large majority have interpreted the term to mean less evidence than is required to establish probable cause.⁶ The Court also used “reason to believe” in *Terry v. Ohio*,⁷ the source of the stop and frisk justification, which in the course of the Court’s later cases has come to mean “reasonable suspicion.” The Court in *Gant* could have employed “reasonable suspicion” but it did not.

The definitive answer awaits a future United States Supreme Court ruling or, before then, lower federal court or state appellate court rulings.

III. Impact of Ruling on Law Enforcement Officers

As discussed above, the Court’s ruling authorizes a search of a vehicle incident to arrest under only two circumstances. The first is when the arrestee is unsecured and within reaching distance of the passenger compartment when the search (not the arrest) is conducted. The Court stated that it will be a rare case in which in which an officer is unable to fully effectuate an arrest so that an arrestee has a realistic possibility of access to the vehicle. Thus, the typical case in which an officer secures the arrestee with handcuffs and places the arrestee in a patrol vehicle will not satisfy this circumstance. Even if a handcuffed arrestee is not placed in a patrol car, it is not likely that the arrestee has realistic access to the vehicle absent unusual circumstances.

The second circumstance is if it is reasonable to believe that evidence relevant to the crime of arrest might be found in the vehicle. For motor vehicle criminal offenses such as driving while license revoked, driving without a valid driver’s license, misdemeanor speeding, etc., it would be highly unlikely that this circumstance would exist to permit a search of the vehicle. For other motor vehicle offenses, such as impaired driving, there may be valid grounds for believing that evidence relevant to the offense may exist in the vehicle (for example, impairing substances or containers used to drink or otherwise ingest them). For arrests based on outstanding arrest warrants, it is highly unlikely that this circumstance would exist to permit a search of the vehicle, unless incriminating facts concerning the offense charged in the warrant exist at the arrest scene or the offense is one for which evidence of the offense likely would still be found in the vehicle. How recent the offense was committed may be an important factor in determining the “reasonable to believe” standard in this context.

If neither circumstance exists to permit a search of the vehicle under *Gant*, there are other Fourth Amendment justifications, among others, that may authorize a warrantless search of a vehicle (as discussed above, the Court mentioned the first two justifications in its opinion):

⁴ 541 U.S. 615, 632 (2004).

⁵ 445 U.S. 573, 603 (1980). Justice Stevens authored the Court’s opinions in both *Payton* and *Gant*.

⁶ See the last paragraph in note 308 on page 61 of Robert L. Farb, *Arrest, Search, and Investigation in North Carolina* (3d ed. 2003) (hereafter, *Arrest, Search, and Investigation*). A case decided since the publication of the book is *United States v. Thomas*, 429 F.3d 282 (D.C. Cir. 2005). North Carolina appellate courts have not specifically addressed this issue.

⁷ 392 U.S. 1, 27 (1968).

1. probable cause to believe that evidence of criminal activity exists in the vehicle;⁸
2. reasonable suspicion that a person, whether or not an arrestee, is dangerous and might access the vehicle to gain immediate control of weapons (commonly known as a “car frisk”);⁹
3. impoundment and inventory of a vehicle, which must be conducted under standard operating procedures that are reasonable under the Fourth Amendment;¹⁰
4. consent to search;¹¹
5. after stopping a vehicle for traffic violations and the driver has left the vehicle, entering the vehicle to remove papers that obscures the vehicle’s Vehicle Identification Number (VIN).¹²

IV. Application of *Gant* to Pending Cases

Under *Griffith v. Kentucky*, 479 U.S. 314 (1987), *Gant* clearly applies to all pending cases in trial courts and those not yet final on direct appeal.¹³

⁸ See pages 84-86 and 340-46 of *Arrest, Search, and Investigation*. Particularly with vehicle searches, probable cause may exist because of an officer’s plain view or smell while standing outside it. See pages 74-75 and 318-25 of *Arrest, Search, and Investigation*.

⁹ See pages 93 and 366 of *Arrest, Search, and Investigation*. If the arrestee is handcuffed and in a patrol car, this reason for searching the vehicle would not exist. On the other hand, if there are unarrested passengers remaining in or near the vehicle for whom there exists a reasonable suspicion of dangerousness and access to weapons in the vehicle, then a search of the vehicle for weapons may be reasonable.

¹⁰ See pages 93-94 and 375-77 of *Arrest, Search, and Investigation*. There may be other bases for searching a vehicle under the community caretaking doctrine, in which searches or seizures may be reasonable under the Fourth Amendment when an officer acts without a criminal investigatory purpose to protect public safety, property, or assist an injured person, for example. See pages 93 and 377-78 of *Arrest, Search, and Investigation*. See also *United States v. Johnson*, 410 F.3d 137 (4th Cir. 2005) (community caretaking exception to search warrant requirement applied to officer’s search of glove compartment of defendant’s car for his registration and identification after defendant was involved in traffic accident and was unresponsive when officer asked him if he was injured; officer opened glove compartment in hope that he would find identifying information he could use to communicate more effectively with defendant so that he could assess defendant’s medical condition and get his car out of traffic lane); *United States v. Scott*, 428 F. Supp. 2d 1126 (E.D. Cal. 2006) (officer was acting in community caretaking function when she searched glove compartment of defendant’s vehicle to retrieve vehicle registration to make accurate report and for tow company driver to initiate towing).

¹¹ See pages 79-82 and 328-40 of *Arrest, Search, and Investigation*.

¹² *New York v. Class*, 475 U.S. 106 (1986). There may be other valid reasons for entering a vehicle after an arrest. The California Supreme Court has ruled that an officer has the authority under the Fourth Amendment when stopping (or arresting) a person for a traffic violation who fails on the officer’s request to produce registration or personal identification documents (such as a driver’s license) to make a limited search of the vehicle for these documents in places they may reasonably be found. *In re Arturo D.*, 38 P.3d 433 (Cal. 2002). However, the North Carolina Court of Appeals in *State v. Green*, 103 N.C. App. 38 (1991), ruled that an officer lacked authority during a traffic stop to search a car’s glove compartment for a safety reason and indicated that the officer could not have searched it for driver’s license or registration. The officer in this case apparently lacked probable cause to charge the defendant with any traffic violation before searching the glove compartment. Neither the United States Supreme Court nor the North Carolina Supreme Court have ruled on this issue.

Assuming a search is unconstitutional based on *Gant*, there may exist exceptions to the application of the Fourth Amendment's exclusionary rule that may allow the unlawfully seized evidence to be admissible, such as inevitable discovery and independent source doctrines.¹⁴

V. Retroactivity of *Gant*

Gant is likely not retroactive to collateral review under *Teague v. Lane*¹⁵ and *State v. Zuniga*¹⁶ because it is a new procedural rule (it significantly narrowed *Belton*) and is not likely to be found to be a watershed rule of criminal procedure.

¹³ *Griffith v. Kentucky*, 479 U.S. 314 (1987). The Court noted in footnote eleven in *Gant* that “[b]ecause a broad reading of *Belton* has been widely accepted, the doctrine of qualified immunity will shield officers from liability for searches conducted in reasonable reliance on that understanding.”

¹⁴ See pages 512-17 of *Arrest, Search, and Investigation* for case summaries on both exceptions. Inevitable discovery cases include *United States v. Arrango*, 879 F.2d 1501 (7th Cir. 1989) (even if search of vehicle incident to arrest was unlawful, seized evidence would have been admissible under inevitable discovery doctrine because later search at agency garage was permissible as inventory search); *United States v. Haro-Salcedo*, (10th Cir. 1997). The independent source exception may apply if before an unlawful search under *Gant* the officer had probable cause to search the vehicle for evidence of criminal activity. For an officer's search that occurred before the date of the *Gant* ruling, even if neither exception applies, there may be an issue whether the Fourth Amendment's exclusionary rule should bar the admission of seized evidence if the officer's violation was not deliberate, reckless, or grossly negligent. See *Herring v. United States*, 129 S. Ct. 695 (2009).

¹⁵ 489 U.S. 288 (1989).

¹⁶ 336 N.C. 508 (1994). However, the North Carolina Supreme Court is not required to follow *Teague* for state collateral review. *Danforth v. Minnesota*, 128 S. Ct. 1029 (2008).