

# Crash, Boom, Bang

The Sound of a DUI Driver Meeting Justice.



Prosecuting Attorneys Institute  
Traffic Safety Resource Prosecutor  
Volume 3 Issue 2 May 2009

## *Arizona v. Gant*

For the past 28 years, the decision in *New York v. Belton*, 453 US 454 (1981), has been understood by many police, attorneys and judges as permitting a search of the passenger compartment of the vehicle recently occupied by an arrestee. This search was considered legal even after the defendant had been handcuffed and could no longer gain access to the vehicle to destroy evidence or acquire weapons.

The US Supreme Court has now significantly limited *Belton* by ruling that once the defendant is secured, a vehicle search incident to arrest can be made only if it is “reasonable to believe” that evidence of the offense for which the person is arrested may be found inside.

The facts of *Arizona v. Gant*: 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

90 MacCorkle Ave. SW  
Suite 202  
South Charleston, WV  
25303  
304-558-3348

### Resources

**Brian J. Lanham**

Traffic Safety Resource  
Prosecutor  
brian.j.lanham@wv.gov

**Philip W. Morrison, II**

Executive Director  
philip.w.morrison@wv.gov

**Teresa A. Tarr**

Violence Against Women  
Resource Prosecutor  
teresa.a.tarr@wv.gov

### In This Issue:

*Arizona v. Gant*,  
556 U.S. \_\_ (2009)



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 Supreme Court considered whether law enforcement officers may search a vehicle incident to the arrest of a recent occupant who has been secured before the search. 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.<sup>1</sup> 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 mere arrest

will allow searching the passenger compartment of an arrestee's vehicle and any containers therein. 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.<sup>3</sup> Thus, *Gant* does not affect the availability of other Fourth Amendment justifications to search a vehicle.

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 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):

1. probable cause to believe that evidence of criminal activity exists in the vehicle;
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");
3. impoundment and inventory of a vehicle, which must be conducted under standard operating procedures that are reasonable under the Fourth Amendment;
4. consent to search;
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).