

Risk Management Bulletin

A Bulletin for Law Enforcement Members of the South Dakota Public Assurance Alliance

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Arizona v. Gant

By John "Jack" Ryan, Attorney

United States Supreme Court-Search Incident to Arrest Vehicle

Court Places New Restrictions on Search Incident to Arrest in Vehicles

Law enforcement officers throughout the United States recognize their ability to search vehicles incident to the arrest of an occupant. The foundation purpose of such searches is to prevent the subject from reaching into the vehicle for a weapon or reaching into the vehicle to destroy evidence. These searches have, for many years, been limited to the passenger compartment of the vehicle.

As a tactical matter, an officer who arrests the occupant of a vehicle generally handcuffs the individual and secures them in the rear of their law enforcement vehicle, prior to conducting the search. This is of particular importance to officer safety when an officer is by themselves when making the arrest. This tactic no longer meets constitutional standards as a search incident to arrest unless there is reason to believe the car contains evidence of the crime for which the arrest has occurred. Read on.

In *Arizona v. Gant*,ⁱ the United States Supreme Court considered an appeal by the prosecution from the State of Arizona regarding whether or not law enforcement can search a vehicle incident to the arrest of a subject after the subject has been secured in handcuffs and secured in the back of a police vehicle.

The Arizona Supreme Court outlined the facts regarding the search of Gant's vehicle as follows:

On August 25, 1999, two uniformed Tucson police officers went to a house after receiving a tip of narcotics activity there. When Defendant Rodney Gant answered the door, the officers asked to speak with the owner of the residence. Gant informed the officers that the owner was not home, but would return later that afternoon. After leaving the residence, the officers ran a records check and discovered that Gant had a suspended driver's license and an outstanding warrant for driving with a suspended license.

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Upcoming Training

June 26th

Train-the-Trainer – Law
Enforcement Model Polices and
Procedures

Criminal Justice Training
Center

1302 E. Highway 14

Pierre, SD 57501

The officers returned to the house later that evening. While they were there, Gant drove up and parked his car in the driveway. As he got out of his car, an officer summoned him. Gant walked eight to twelve feet toward the officer, who immediately arrested and handcuffed him. Within minutes, Gant had been locked in the back of a patrol car, where he remained under the supervision of an officer. At least four officers were at the residence by this time and the scene was secure. Two other arrestees had already been handcuffed and locked in the back of separate patrol cars and there were no other people around.

After Gant had been locked in the patrol car, two officers searched the passenger compartment of his car and found a weapon and a plastic baggie containing cocaine. Gant was charged with one count of possession of a narcotic drug for sale and one count of possession of drug paraphernalia for the baggie that held the drug.ⁱⁱ

The Supreme Court of Arizona asserted the issue in the case:

This case requires us to determine whether the search incident to arrest exception to the *Fourth Amendment's* warrant requirement permits the warrantless search of an arrestee's car when the scene is secure and the arrestee is handcuffed, seated in the back of a patrol car, and under the supervision of a police officer. We hold that in such circumstances, a warrantless search is not justified.

In agreeing to an appeal in the case, the United States Supreme Court limited the question in the case to the following:

"Does the Fourth Amendment require law enforcement officers to demonstrate a threat to their safety or a need to preserve evidence related to the crime of arrest in order to justify a warrantless vehicular search incident to arrest conducted after the vehicle's recent occupants have been arrested and secured?"

Key Question: Can officer conduct a search of a vehicle incident to arrest after an arrestee has been secured in handcuffs and placed in a locked police vehicle?

The Decision

In analyzing the facts in *Gant* the United States Supreme Court asserted: "In *Chimel*,ⁱⁱⁱ we held that a search incident to arrest may only include 'the arrestee's person and the **area within his immediate control**'—construing that phrase **to mean the area from within which he might gain possession of a weapon or destructible evidence**. That limitation, which continues to define the boundaries of the exception, ensures that the scope of a search incident to arrest is commensurate with its **purposes of protecting arresting officers and safeguarding any evidence of the offense of arrest** that an arrestee might conceal or destroy."

The Court went on to hold that: **a search incident to arrest in a vehicle is only authorized "when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search."**

The Court then went on to add **one additional search justification** noting that it went beyond the *Chimel* rationale. The Court held that

officer would be justified in searching a vehicle incident to the arrest of an occupant in cases where it would be **“reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.”**

The Court noted: “In many cases, as when a recent occupant is arrested for a traffic violation, there will be no reasonable basis to believe the vehicle contains relevant evidence. But in others, including *Belton* and *Thornton*, the offense of arrest will supply a basis for searching the passenger compartment of an arrestee’s vehicle and any containers therein.”

The Court held: **“Police may search a vehicle incident to a recent occupant’s arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee’s vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies.”**

Bottom Line:

Simply stated the new rules justifying search incident to arrest of the passenger compartment of a vehicle are:

- ✓ **Lawful Arrest; and**

- ✓ **Search Must take place at the time of the arrest (contemporaneous with arrest); and**

- ✓ **The arrestee must have the possibility of access (thus not yet secured); OR**

- ✓ **There is a likelihood of discovering offense related evidence (the offense for which the subject is being arrested)**

It is noted that law enforcement may still rely on other exceptions to the warrant requirement with respect to motor vehicles where applicable.

Additional Commentary Due to Questions *Arizona v. Gant*

By John “Jack” Ryan, Attorney

In *Arizona v. Gant* decided by the United States Supreme Court recently, there is a sentence in the majority opinion, which is creating a misconception by the media as well as numerous law enforcement web-sites and commentators reporting on the case.

The quote creating the issue asserts: “When these justifications are absent, a search of an arrestee’s vehicle will be unreasonable **unless police obtain a warrant or show that another exception to the warrant requirement applies.**” This has led to numerous commentators, some of whom are relied upon by law enforcement agencies to state: “The Supreme Court ruled Tuesday that police **need a warrant** to search the vehicle of someone they

have arrested if the person is locked up in a patrol cruiser and poses no safety threat to officers.” [policeone.com] News outlets, due to their lack of knowledge with respect to Fourth Amendment issues have missed the boat as well in reporting: “WASHINGTON – The Supreme Court has ruled that police **need a warrant** to search the vehicle of someone they have arrested if the person is locked up in a patrol cruiser and poses no safety threat to officers.” [Associated Press]

What all of these commentators have failed to recognize is that the case is addressing the search of motor vehicles incident to arrest and not any of the other exceptions related to searches of vehicles. In fact, the majority opinion written by Justice Stevens takes pains to recognize: “**When these justifications are absent, a search of an arrestee’s vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies.**” It should be noted that this is the same quote that created the problem.

When one examines this quote it indicates that police will not be able to search the car incident to arrest unless they get a warrant. Any law enforcement officer knows that to get a warrant to search an officer must first have probable cause.

If an officer has the probable cause necessary to obtain a warrant for a motor vehicle then he does not need to obtain the warrant because another exception applies. The motor vehicle exception [Carroll Doctrine] applies. Thus, the quote from the case must be read in light of the other exceptions which were specifically left intact by the decision.

The only exception impacted by this case was incident to arrest searches. If the officer meets the criteria necessary to obtain a warrant, the officer is automatically entitled to search the vehicle without a warrant under the motor vehicle exception, which was in no way impacted by this case.

New Model Policy for South Dakota Agencies

Attached is the new model policy for Motor Vehicle Stops and Searches. Please update your policies and procedures to reflect these changes. **It is very important that training on this policy be provided for each of your officers.**

Model Policies and Procedures Train-the-Trainer Session

We are pleased to announce that the **final** Train-the-Trainer class will be conducted for the model law enforcement policies and procedures project in Pierre on **Friday, June 26, 2009** at the Criminal Justice Training Center (1302 E. Highway 14). The project was funded by the South Dakota Attorney General and endorsed by the South Dakota Police Chief’s and Sheriff’s Associations. The model policies and procedures project covers 12 critical law enforcement tasks.

The Policies and Procedures in the 12 Critical Law Enforcement Tasks include:

- 1) Use of Force
- 2) Pursuit
- 3) Search, Seizure and Arrest
- 4) Care, Custody, Restraints and Transportation of Prisoners
- 5) Emergency Operations of Vehicles
- 6) Domestic Violence and Agency Employee Domestic Misconduct
- 7) Off-Duty Conduct/Off-Duty Employment
- 8) Sexual Harassment/External Sexual Misconduct
- 9) Selection and Hiring
- 10) Complaints and Internal Affairs Investigations
- 11) Special Operations: SWAT, Narcotics, High Risk Warrant Service
- 12) Dealing with Mentally Ill, Emotionally Disturbed Persons with Diminished Capacity

Each of these policies and procedures are consistent with Constitutional Law, Circuit Court Decisions, South Dakota State Law and meet generally accepted police practices. The South Dakota Public Assurance Alliance (SDPAA) has agreed to fund the annual update fees for the next 3 years.

Nationally known experts, Jack Ryan and Jim Alsup will be conducting this final training session on the implementation process. All law enforcement agencies are encouraged to send at least 1 representative to a class. Participants will receive a copy of the policies and procedures along with training aids to assist agencies in the implementation of these new policies. **The classes will begin at 9 AM and conclude at approximately 4 PM each day.**

Entities that have their Police Professional Liability coverage through the South Dakota Public Assurance Alliance that adopt and train their officers in these policies and procedures are eligible to receive a 5% Loss Control Credit in 2010.

To register for the classes, please contact Janet at Safety Benefits at (888) 313-0839 by Wednesday, June 17th!!

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ⁱ *Arizona v. Gant*, 556 U.S. ____ (2009); slip op. No. 07-542 (2008).

ⁱⁱ *Arizona v. Gant*, 216 Ariz. 1 (Supreme Ct. of Arizona 2007).

ⁱⁱⁱ *Chimel v. California*, 395 U.S. 752 (1969),