Constitutional Limits on Officers' Authority to Search Vehicles

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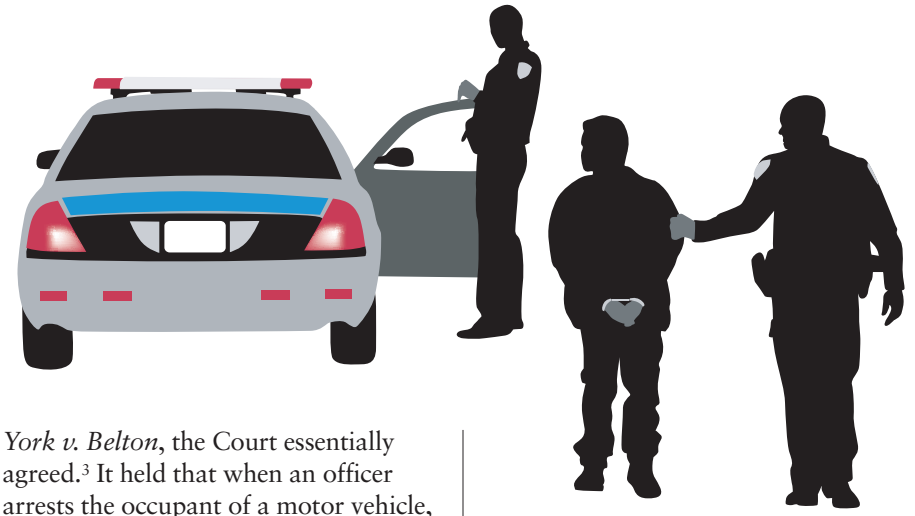

One of the most controversial U.S. Supreme Court decisions of the year so far is *Arizona v. Gant*, which significantly curtailed the right of police officers to search a suspect's automobile without a search warrant, as part of a suspect's arrest.[1] The case reversed a long-standing rule regarding these so-called searches incident to arrest and, in the process, raised questions about similar searches, such as the search of a suspect's briefcase or backpack upon the suspect's arrest.

This article first explains the law regarding vehicle searches incident to arrest before the *Gant* decision. Next, it explains the ramifications of the Supreme Court's new and more restrictive search rule. Finally, it identifies some practical concerns raised by the new rule.

Gant is the latest in a long series of Supreme Court decisions regarding searches incident to arrest. The first was the landmark case *Chimel v. California*, in which the Court held that when an officer lawfully arrests a suspect, the officer may search the suspect without a search warrant, as part of the arrest.[2] Such a search is justified partly to protect the officer from any weapon that the suspect might be carrying and partly to prevent the suspect from destroying evidence.

But what if the suspect was arrested while in a car? Officers argued that they needed to be able to search the passenger compartment of the vehicle as well, to ensure that the suspect could not reach into the glove compartment for a gun or grab critical evidence from beneath the seat and destroy it. In *New York v. Belton*, the Court essentially agreed.[3] It held that when an officer arrests the occupant of a motor vehicle, the officer may search the entire passenger compartment of the vehicle, including any containers in it, such as purses, briefcases, boxes, and the glove compartment. In a 2004 case, *Thornton v. United States,* the Court extended the *Belton* rule to allow the search of the entire passenger compartment of a vehicle upon the arrest of a person who exited the vehicle shortly before being arrested, on the theory that the arrestee could reach back into the vehicle for a weapon or to destroy evidence.[4]

These vehicle search decisions were popular with officers because they provided clear, easy-to-apply rules and gave the officers substantial authority to search vehicles. For example, when an officer arrested a suspect for driving while impaired, the officer could search the suspect's car incident to that arrest. If the officer found drugs, the officer could bring drug charges in addition to the charge of driving while impaired.

On the other hand, many legal commentators argued that the *Belton* line of cases gave the police too much power to conduct warrantless searches. They contended that after a suspect had been arrested and removed from the vehicle, the risk of the suspect's retrieving a weapon from the vehicle or destroying evidence in the vehicle was remote.[5]

In *Gant* the pendulum swung away from the officers' preferences and toward the commentators' arguments. A 5–4 majority emphasized the two reasons given in *Chimel* for allowing searches incident to arrest: promoting the safety of officers and preventing the destruction of evidence. The majority concluded that vehicle searches incident to arrest should be permitted only when they furthered those reasons.

Accordingly, the majority held, an officer may search the passenger compartment of a vehicle incident to a recent occupant's arrest only when one of two conditions obtain. First, a search is permitted if the arrestee is "unsecured and within reaching distance of the passenger compartment at the time of the search." In practice, this is very rare. An arrestee is typically placed in the back seat of a police car and often is handcuffed. Thus, vehicles normally may be searched incident to arrest only if they meet the second test of *Gant*, which permits a search when it is "reasonable to believe" that evidence of the crime of arrest may be found in the vehicle.[6]

The *Gant* case itself illustrates how these new rules work. The case began when the police received reports of drug activity at a particular residence. They went to investigate, knocked on the door, and Rodney Gant answered. He identified himself and indicated that the owner of the premises was not there,

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but would be back later. The police left, ran Gant's record, and found an outstanding warrant for driving with a suspended license. They went back to the residence that night and staked it out. They saw Gant drive up, park, and exit his vehicle. The officers called out to him, and Gant approached the officers, meeting them about 10 feet from his car. They arrested him on the basis of the outstanding warrant, handcuffed him, and put him in the back of a police car. Then they searched his car incident to the arrest, finding a bag of cocaine.

Gant was charged with drug offenses, but he argued that the cocaine had been seized illegally. He contended that, because he was in the officers' custody, there was no real risk that he would access a weapon in his car or destroy any evidence in it. Under the principles discussed earlier, the Supreme Court agreed. Because Gant was neither "unsecured" nor within "reaching distance" of his vehicle at the time of the search, and because the majority thought it unlikely that evidence of the crime of arrest (driving with a suspended license) would be found in the vehicle, the majority held that the search was invalid.

As a theoretical matter, the reasoning of the Court is unimpeachable. The Court often has said that a warrantless search by law enforcement officers should be the exception, not the rule. In other words, warrantless searches should be permitted only when they are clearly justified by the circumstances. *Gant* is probably more consistent with that principle than *Belton* was, because *Belton* allowed vehicle searches incident to arrest as a matter of course, even when there was no realistic danger to officers or risk that evidence would be destroyed.

The Court's reasoning in *Gant* is unimpeachable, but the decision poses some practical problems.

Regardless of its legal reasoning, however, the decision brings some practical problems with it. First, as Justice Antonin Scalia pointed out in his reluctant concurrence, the decision creates a perverse incentive for officers to leave arrestees unsecured, in order to justify searches of the arrestees' vehicles. To the extent that *Gant* results in officers risking their own safety to further their investigations, it is counterproductive.

Second, because *Gant* applies to pending cases, there will be a frustrating result in some instances: vehicle searches conducted by officers in reliance on the law as it stood before *Gant* will be invalidated, despite having been conducted in good faith and having been proper under the law in effect at the time of the search. Evidence will be suppressed, and cases will be lost despite the officers' faultless behavior. This effect will be mitigated in some cases by the language in *Gant* allowing a warrantless vehicle search when there is reason to believe that the vehicle will contain evidence of the crime of arrest, and in other cases by other legal doctrines. But there will be real costs during the transition period from searches allowed under the *Belton* decision to the tighter rules set by *Gant*.

Finally, whether the rationale of *Gant* will be extended into other areas is worth considering. For example, since *Belton*, most courts have held that personal items like purses, backpacks, and briefcases may be searched incident to an arrest if they are within an arrestee's reach at the time of arrest. Further, many courts have allowed the search of cellular telephones and other electronic devices under a similar justification. Does the rationale of *Gant* apply to these searches too? In other words, after *Gant*, may an officer search an arrestee's briefcase or cellular telephone incident to an arrest, if the arrestee has been secured and separated from the item? The answer may not be clear, but *Gant* signals that it is time to raise the question.

(For more details about the *Gant* case, visit the website identified in the sidebar on this page.)

Notes

1. Arizona v. Gant, 556 U.S. ___, 129 S. Ct. 1710 (2009).
2. Chimel v. California, 395 U.S. 752 (1969).
3. New York v. Belton, 453 U.S. 454 (1981).
4. Thornton v. United States, 541 U.S. 615 (2004).
5. *See*, *e.g.*, Wayne R. LaFave, *Search and Seizure*, vol. 3 (4th ed. Eagan, MN: West, 2004), 527.
6. *Gant*, 556 U.S. at ___, 129 S. Ct. at 1719.

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