Recent Case Report

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Arizona v. Gant

(2009) __ U.S. __ [2009 WL 1045962]

Issue

May officers search a vehicle incident to the arrest of an occupant if the arrestee had been handcuffed and locked in a patrol car?

Facts

Officers in Tucson, Arizona stopped a car driven by Gant because they knew that his driver's license had been suspended and that he was wanted on a warrant for driving on a suspended license. After handcuffing him and locking him in a patrol car, they searched the passenger compartment of his vehicle incident to the arrest (i.e., a *Belton* search) and found a gun and drugs. When Gant's motion to suppress the evidence was denied, his case went to trial and he was convicted.

Discussion

Gant argued that the search of his car was unlawful because there was no need for it. In particular, he contended that because the purpose of *Belton* searches is to prevent arrestees from grabbing hold of weapons and destructible evidence, these searches should not be permitted after the arrestee had been secured. In a 5-4 decision, the United States Supreme Court agreed.

In 1969, the Court in *Chimel* v. *California*[1] ruled that officers who have made a custodial arrest of a suspect may search the area within the arrestee's "immediate control" to secure weapons or destructible evidence. It quickly became apparent, however, that officers and judges were having trouble applying *Chimel* when the place searched was a vehicle in which the arrestee had been an occupant. Specifically, it was often difficult to determine whether the passenger compartment was within the arrestee's immediate control when, as is usually the case, he was somewhere outside the vehicle when the search occurred.

About 12 years later, the Court corrected the problem in *New York* v. *Belton.*[2] In *Belton*, the Court began by pointing out that the lower courts "have found no workable definition of the area within the immediate control of the arrestee when that area arguably includes the interior of an automobile and the arrestee is its recent occupant." This situation, said the Court, was "problematic" because officers in the field needed "a set of rules which, in most instances, makes it possible to reach a correct determination" of what places and things they may search.

So, after noting that weapons and evidence inside "the relatively narrow compass of the passenger compartment" of an automobile are "in fact generally, even if not inevitably" within the arrestee's reach at some point, the Court announced the following "bright line" rule: Officers who have made a custodial arrest of an occupant of a vehicle

[1] (1969) 395 U.S. 752.
[2] (1981) 453 U.S. 454.

may search the passenger compartment—regardless of whether the arrestee had physical access when the search occurred. This rule was consistent with the Court's earlier determination that people have "a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects."[3]

In *Gant*, however, the Court ruled that *Belton* searches can no longer be based on generalizations and clearly-understood rules. Instead, the Court announced that vehicle searches incident to the arrest of an occupant are now permitted only if the arrestee had immediate access to the passenger compartment at the time the search occurred. Said the Court: "[W]e hold that *Belton* does not authorize a vehicle search incident to a recent occupant's arrest after the arrestee had been secured and cannot access the interior of the vehicle." Consequently, the Court ruled the search of Gant's car was unlawful.

Comment

There are at least three problems with the *Gant* decision that should be noted. First, not only did the justices erase *Belton's* "bright line," they replaced it with three separate and conflicting tests for determining when *Belton* searches are permitted. At one point, they said the test is *access*; i.e., a search is permitted if the arrestee had "access" to his car.[4] Elsewhere they said the test was *reaching distance*; i.e., a search is permitted if the arrestee was "within reaching distance" of the vehicle.[5] And then they announced that access and reaching distance were not enough—the arrestee must also have been *unsecured*, which presumably means not handcuffed.[6]

Because this is an issue of some importance to officers and lower courts—and especially because of the danger and uncertainty that surround street-side arrests—it is hard to imagine how the justices of the Supreme Court of the United States could have failed to notice that this decision was incoherent. Unfortunately, this appears to have been an indication of the quality of thought that went into this regrettable opinion.

Second, the Court claimed that its decision was necessary because the lower courts were interpreting *Belton* too broadly by permitting searches after the arrestee had been secured. This is simply not true. The lower courts did not expand *Belton,* they applied it. And they applied it exactly as it was written and as it was intended. The Court in *Belton* made it clear that it was announcing a broad decision that was necessary to provide officers with a "straightforward rule" which, in the context of car searches, meant a rule based on a "generalization" as to the area that was usually within the arrestee's control in the course of car stops. Accordingly, in announcing its ruling, the *Belton* Court said, "In order to establish the workable rule this category of cases requires, we read *Chimel's* definition of the limits of the area that may be searched in light of that generalization." Besides, if the lower courts were grossly misinterpreting *Belton*, why did it take almost 30 years for this "problem" to come to the Supreme Court's attention?

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[3] *Cardwell* v. *Lewis* (1974) 417 U.S. 583, 590; *Indianapolis* v. *Edmond* (2000) 531 U.S. 32, 54.
[4] Court: Search was unlawful "because Gant could not have accessed his car to retrieve weapons or evidence at the time of the search."
[5] Court: Search is lawful "only if the arrestee is within reaching distance of the passenger compartment at the time of the search."
[6] Court: *Belton* searches are now permitted "only when the arrestee is unsecured *and* within reaching distance of the passenger compartment at the time of the search." Emphasis added.

Third, as noted earlier, the *Gant* justices felt that the *Belton* Court had intended to strictly limit its decision to situations in which the arrestee was unsecured and able to launch an immediate attack on the officers while they conducted the search. But because officers never—ever—turn their backs on unsecured arrestees, it appears that the *Gant* justices believed that *Belton* Court had promulgated a rule that would never—ever—be utilized by officers or applied by any court in the nation. But why would they have written an absolutely pointless opinion?

There is only one plausible explanation: The *Belton* Court must have been playing a practical joke, possibly hoping to refute the suspicion that the legal profession lacks a sense of humor. Why else would it invent a constitutional rule covering such a purely fictional predicament? In fact, it seems likely that, shortly after the *Belton* justices issued their opinion on July 1, 1981, they gathered in their chambers and anxiously awaited news that some judge, law professor, law student, or journalist had exposed their farce. And award him a prize!

It must have been terribly disappointing that no one detected their prank that day. Nor the next. Nor for the next 30 years. But now that the *Gant* justices have done so, there is only one thing for officers, prosecutors, and judges to say: The joke's on us!

Anyhow, assuming that *Gant* itself was not a practical joke, the question is: What will be its affect on law enforcement? Actually, it may not be as catastrophic as first thought. This is because there are several other legal justifications for searching vehicles in which an arrestee was an occupant. For one thing, when the arrestee was the driver or owner of the car, officers will usually have the legal authority to tow it, which means they may conduct an inventory search of the passenger compartment and trunk so long as the search was conducted pursuant to standardized criteria and in accordance with departmental regulations.

In addition, *Gant* did not change the rule that officers may search any vehicle without a warrant if they have probable cause to believe there is evidence of a crime inside.[7] Furthermore, the Court in *Gant* announced a new type of vehicle search: officers may now search the passenger compartment without a warrant if they have reasonable suspicion to believe that it contained evidence pertaining to the crime for which the suspect was arrested.[8] (This exception did not apply in *Gant* because, as noted, he was arrested for a crime for which there are no fruits or instrumentalities; i.e., driving on a suspended license.) The Court also said "there may be still other circumstances in which safety or evidentiary interests would justify a search." But because the Court did not elaborate, it will be the job of the lower courts to figure out what it meant.

The Court in *Gant* also reaffirmed its ruling in *Michigan* v. *Long*[9] that officers may search for weapons in the passenger compartment if, (1) an occupant of the vehicle was lawfully detained or arrested, and (2) there was reasonable suspicion to believe there was a weapon inside. Also keep in mind that vehicle searches will usually be permitted if an

[7] See *United States* v. *Ross* (1982) 456 U.S. 798, 809 ["[A vehicle] search is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not actually been obtained."].

[8] Court: "[C]ircumstances unique to the automobile context justify a search incident to arrest when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle."

[9] (1983) 463 U.S. 1032.

occupant was on parole or searchable probation, or if the officers obtained consent to search from a person who appeared to be in control of the vehicle.

Finally, a note to prosecutors. When litigating the propriety of pre-*Gant* searches that were lawful under *Belton,* keep in mind that the Supreme Court, in the recent case of *Herring* v. *United States,* ruled that the suppression of evidence would not be an appropriate remedy when the officers' conduct was not blameworthy.[10] As the Court explained, "To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system."[11] Plainly, then, it would make no sense to suppress evidence discovered in a lawful *Belton* search that occurred before *Gant* because the officers would have done nothing wrong. POV

[10] (2009) __ U.S. __ [2009 WL 77886].

[11] See *U.S.* v. *Farias-Gonzalez* (11th Cir. 2009) __ F.3d __ [2009 WL 232328] [as the result of *Herring* "[w]e now apply the cost-benefit balancing test to the case before us"]; *Illinois* v. *Krull* (1987) 480 U.S. 340, 348-49 ["[E]vidence should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment."].