

*ARIZONA V. GANT*<sup>1</sup>

In *Arizona v. Gant*, a 5-4 decision, the United States Supreme Court narrowed the circumstances that justify vehicle searches incident to arrest. The Court held this warrant exception is justified “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.”<sup>2</sup> The privilege of police to conduct a vehicle search incident to arrest is no longer automatic in the federal system.

The facts were simple. In August 1990, Tucson police officers went to a residence to investigate a tip that drugs were being sold there.<sup>3</sup> When they knocked, Gant answered the door, identified himself, and told the officers that the owner was not home.<sup>4</sup> The officers left and checked Gant’s record; he had a suspended driver’s license and an outstanding warrant for driving with a suspended license.<sup>5</sup> The officers returned to the house later that night and observed Gant drive up, park in the driveway, and step out of his vehicle.<sup>6</sup> They arrested him for driving on a suspended license and secured him in the back of a patrol car.<sup>7</sup> Two officers then conducted a warrantless search of his vehicle and found cocaine and a gun.<sup>8</sup>

Examining three prior cases, the United States Supreme Court laid out the modern requirements and scope of the federal warrant exception for vehicle searches incident to arrest. In *Chimel v. California*, the Court held that a search incident to arrest is justified only when reasonably necessary to protect officer safety or prevent an arrestee from hiding or destroying

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<sup>1</sup> *Ariz. v. Gant*, 129 S. Ct. 1710 (2009).

<sup>2</sup> *Id.* at 1723.

<sup>3</sup> *Id.* at 1714.

<sup>4</sup> *Id.* at 1714–1715.

<sup>5</sup> *Id.* at 1715.

<sup>6</sup> *Id.*

<sup>7</sup> *Gant*, 129 S. Ct. at 1715.

<sup>8</sup> *Id.*

evidence of the offense of arrest.<sup>9</sup> These guidelines remained in place and provided the justification for vehicle searches incident to arrest in *New York v. Belton*;<sup>10</sup> however, the requirement that an arrestee be able to reach a weapon or evidence became more theoretical.<sup>11</sup> The *Belton* Court held that “when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile.”<sup>12</sup> Most read this as a “bright-line rule” permitting police to search a recent occupant’s vehicle, even if the arrestee could no longer access the vehicle.<sup>13</sup> In *Thornton v. U.S.*, the Court seemed to affirm this interpretation:

To be sure, not all contraband in the passenger compartment is likely to be readily accessible to a “recent occupant.” . . . The need for a clear rule, readily understood by police officers and not depending on differing estimates of what items were or were not within reach of an arrestee at any particular moment, justifies the sort of generalization which *Belton* enunciated.<sup>14</sup>

Thornton, like Gant, was handcuffed in the back of a patrol car while his car was searched, and the Court upheld the search.<sup>15</sup> Because of these decisions, the warrant exception was widely considered automatic until *Arizona v. Gant*.

Gant moved to suppress the evidence from the search of his vehicle, arguing the search was not justified by *Chimel* because he could not have obtained weapons from his vehicle while handcuffed in the back of a patrol car.<sup>16</sup> Furthermore, the police officers could not have expected to find evidence of the crime for which he was arrested—driving with a suspended license—in his car.<sup>17</sup> Following the bright-line rule of *Belton*, the trial court rejected Gant’s

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<sup>9</sup> *Chimel v. Cal.*, 395 U.S. 752, 763 (1969).

<sup>10</sup> *N.Y. v. Belton*, 453 U.S. 454, 460 n. 3 (1981).

<sup>11</sup> *Id.* at 460.

<sup>12</sup> *Id.*

<sup>13</sup> *Gant*, 129 S. Ct. at 1718.

<sup>14</sup> *Thornton v. U.S.*, 541 U.S. 615, 622–623 (2004).

<sup>15</sup> *Id.* at 618, 623–624.

<sup>16</sup> *Gant*, 129 S. Ct. at 1715.

<sup>17</sup> *Id.*

arguments.<sup>18</sup> A jury convicted Gant of possession of a narcotic drug for sale and possession of drug paraphernalia.<sup>19</sup>

On appeal, the Arizona Supreme Court reversed the trial court's decision.<sup>20</sup> The Court concluded that *Belton* did not address the issue of whether law enforcement could search a recent occupant's car after police had secured the scene.<sup>21</sup> The Court stated that once a scene is secure, the *Chimel* rationales no longer exist, and the warrant exception is not permitted.<sup>22</sup>

The United States Supreme Court granted the State's petition for certiorari in part because of the "chorus" of voices asking the Court to revisit its *Belton* and *Thornton* decisions.<sup>23</sup> Since *Belton*, courts of appeals had differed on whether it mattered if a recent occupant could actually access the vehicle at the time of the search, though most granted the exception even when the *Chimel* factors were a "fiction."<sup>24</sup> Critics expressed concern that the broad interpretation of *Belton* violated the Fourth Amendment by permitting police in the federal system, and in states that followed the federal system, to rifle through the belongings of anyone stopped for a traffic violation.<sup>25</sup> Many states, including Montana, declined to follow the federal Court's example and continued to require that an arrestee be within reach of the vehicle.<sup>26</sup>

The United States Supreme Court's holding in *Gant* at least narrowed, and, according to the dissent, overruled *Belton* and *Thornton*.<sup>27</sup> The Court held that the *Chimel* rule only justifies a

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Gant*, 129 S. Ct. at 1716.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 1718 (referencing Justice Brennan's description of the *Belton* rule as relying on "a fiction—that the interior of a car is *always* within the immediate control of an arrestee who has recently been in the car," *Belton*, 453 U.S. at 466 (Brennan & Marshall, JJ., dissenting)).

<sup>25</sup> *Id.* at 1720.

<sup>26</sup> *Id.* at 1721 n 8. Under Montana Code Annotated § 46–5–102 (2007), the grab area is "the area within a[n] arrestee's] immediate presence."

<sup>27</sup> *Id.* at 1726 (Alito, J., Roberts, C.J., & Kennedy, J., dissenting; Breyer, J., joining except as to part II-E).

vehicle search incident to arrest if the risk to officers or evidence is genuine.<sup>28</sup> The Court noted 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.”<sup>29</sup>

In addition, however, the Court recognized a new justification for the warrant exception. The Court held that “circumstances unique to the vehicle context justify a search incident to a lawful arrest when it is ‘reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.’”<sup>30</sup> The Court lifted this justification from Justice Scalia’s concurrence in *Thornton*, where he suggested that *Belton* should be construed as allowing a vehicle search incident to arrest to find evidence related to the crime for which the arrest was made.<sup>31</sup>

Under the Court’s new test for a vehicle search incident to arrest, the searches in *Belton* and *Thornton* would not be justified by *Chimel* but would be justified as evidentiary searches.<sup>32</sup> Because both *Belton* and *Thornton* were arrested on drug charges, it was reasonable for officers to believe that further evidence of their offenses would be found in their vehicles.<sup>33</sup> *Gant*, on the other hand, was arrested for a traffic offense, so it was not reasonable to believe that evidence of that offense would be found in his car.<sup>34</sup> Because he was securely in custody and could not access his car, the *Chimel* factors were not met either.<sup>35</sup> Thus, the warrantless search of *Gant*’s car was illegal.

Justice Scalia concurred in the Court’s decision, providing the crucial, fifth vote. He wrote separately to underscore his opinion that *Belton*’s bright-line rule was intentional and that

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<sup>28</sup> *Gant*, 129 S. Ct. at 1721 (majority).

<sup>29</sup> *Id.* at 1719 n. 4.

<sup>30</sup> *Id.* at 1719 (quoting *Thornton*, 541 U.S. at 632 (Scalia & Ginsberg, JJ., concurring)).

<sup>31</sup> *Thornton*, 541 U.S. at 630–631 (Scalia & Ginsberg, JJ., concurring).

<sup>32</sup> *Gant*, 129 S. Ct. at 1719.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

the Court should “abandon the *Belton-Thornton* charade of officer safety.”<sup>36</sup> He would limit vehicle searches incident to arrest to cases where an officer reasonably believes evidence of the crime for which the arrest was made might be discovered in the vehicle or has probable cause that evidence of another crime will be discovered in the vehicle.<sup>37</sup> Because no other Justice wished to abandon *Chimel*, and because the Court was divided, Scalia chose to join the majority rather than dissent and leave the issue unresolved.<sup>38</sup>

The dissenting Justices argued that the Court’s holding overruled constitutional precedents *sua sponte* and without justification.<sup>39</sup> Writing for the dissent, Justice Alito objected to the Court’s reinterpretation of *Belton*, asserting that the common interpretation of *Belton*’s “bright-line rule” was intended by the *Belton* Court.<sup>40</sup> He argued that the rule should not have been abandoned because law enforcement had come to rely on it;<sup>41</sup> circumstances had not changed that made the rule unworkable;<sup>42</sup> the old rule was clearer and more applicable on the street than the new rule will be;<sup>43</sup> *Thornton* had recently affirmed the rule;<sup>44</sup> and *Belton* reasonably interpreted *Chimel*’s definition of the grab area as the area within reach at the time of arrest, rather than at the time of the search.<sup>45</sup> Justice Alito particularly condemned the Court’s uncritical adoption of Justice Scalia’s evidentiary rationale, raising several questions that will have to be answered in future cases.<sup>46</sup>

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<sup>36</sup> *Id.* at 1725 (Scalia, J., concurring).

<sup>37</sup> *Id.*

<sup>38</sup> *Gant*, 129 S. Ct. at 1725 (Scalia, J., concurring).

<sup>39</sup> *Id.* at 1726, 1727 (Alito, J., Roberts, C.J., & Kennedy, J., dissenting; Breyer, J., joining except as to part II-E).

<sup>40</sup> *Id.* at 1727.

<sup>41</sup> *Id.* at 1728–1729.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Gant*, 129 S. Ct. at 1729 (Alito, J., Roberts, C.J., & Kennedy, J., dissenting; Breyer, J., joining except as to part II-E).

<sup>45</sup> *Id.* at 1729–1731 (Breyer, J., did not join this argument).

<sup>46</sup> *Id.* at 1731.

*Gant*, a 5-4 decision, signaled a significant departure from the past 40 years of vehicle-search-incident-to-arrest cases. The adoption of Justice Scalia's evidentiary rationale and the requirement that an arrestee be within reaching distance of the vehicle for the *Chimel* rationales to apply will certainly affect vehicle searches incident to arrest in the federal system.

The Montana practitioner should take note of the new scope for this warrant exception when practicing in federal court. The Montana practitioner should also be aware that several questions remain unanswered. What is the standard for an officer to "reasonably believe" that evidence of the crime of arrest will be found in a vehicle? When justified by the evidentiary search rationale, is a vehicle search still limited to the passenger compartment and the containers within it? Will this new rationale be extended to other searches incident to arrest? Finally, when considering the *Chimel* rationales, what is the extent of the grab area if an arrestee must be within "reaching distance" of the car? Does *Gant* call into question *Belton*'s decision that even locked containers in the passenger compartment may be searched? Finally, might an argument be made based on *Gant* that the area within an arrestee's "immediate presence" under Montana statute should be narrower? Time will tell.

— *Jori Frakie*