

# CHANGING RULES ON VEHICULAR SEARCHES

**The Supreme Court has substantially changed the law concerning searches that accompany a lawful arrest, particularly in the context of arrests involving vehicular stops. Law enforcement professionals should understand the changes, and training and policies should be updated to reflect these new legal standards.**

On April 21, 2009, the U.S. Supreme Court issued *Arizona v. Gant*, overturning a prior Supreme Court opinion, *New York v. Belton* (1981). *Belton* had long been interpreted by both the courts and the law enforcement community to allow officers to search a vehicle and all compartments and containers within a vehicle as a routine part of a search incident to arrest of a person who had recently been in an automobile. Relying on *Belton*, many sheriff's departments crafted policies allowing deputies to search an automobile if the driver was arrested for driving on a suspended license, reckless driving or any other criminal traffic violation, even when the deputy conducting the search had no reason to believe the vehicle contained evidence relating to the offense for which the person was being arrested. Such a policy is no longer valid under *Gant*.



In the incident that led to *Gant*, officers were monitoring a house because they received a tip that its occupants were selling drugs out of the residence. Officers determined that one of the residents, Gant, had a suspended driver's license and that there was an outstanding traffic warrant for his arrest. Gant drove up to his residence as officers were arresting two other individuals for misdemeanor offenses. When he stepped out of his vehicle, officers immediately identified him as a wanted individual driving without a license. Officers met Gant 10-12 feet from his car, arrested him, handcuffed him and then placed him in a patrol vehicle. Two officers searched Gant's vehicle and found a gun and bag of cocaine in the pocket of a jacket left in the backseat. A jury convicted Gant of crimes relating to possession of the cocaine.

The Supreme Court affirmed the Arizona Supreme Court's reversal of Gant's convictions on the grounds that the search of his vehicle and jacket was unconstitutional and was not justified as a search incident to a lawful arrest.

The Court held that officers may continue to conduct searches incident to arrest in order to (1) ensure officer safety and (2) preserve evidence. However, the Court redefined under what circumstances a search is justified by a concern for officer safety. An appropriate search, the Court said, includes only the arrestee's person and the area within his immediate control – from which he might be able to

obtain a weapon. In this case, *at the time the search was conducted*, Gant was away from his vehicle and in handcuffs. With no possibility that he could enter his vehicle and obtain a weapon, the search could not be justified by a concern for officer safety.

Similar reasoning pertained to the second concern, preservation of evidence. Because Gant was secured away from the vehicle, a search incident to arrest could not be justified based upon a concern that he could obtain and destroy evidence within his vehicle.

That Gant was arrested for a traffic offense is an important factor. The Court reiterated that, pursuant to *Thornton v. United States* (2004), the nature of the offense involved may supply a basis for searching a vehicle and its contents. However, because Gant was arrested for driving on a suspended license, there was no reasonable possibility that evidence of the crime of driving on a suspended license would be found in the vehicle.

The Court noted that in most cases involving the arrest of an occupant of a vehicle, the arrest will occur after the arrestee is removed from the vehicle. The Court reasoned it would be the *rare* case in which an individual about to be put under arrest or already under arrest would have a real opportunity to access the contents of his or her vehicle.

The Constitution states that warrantless searches by officers are *per se* unreasonable (i.e., unconstitutional) unless certain enumerated exceptions apply. Officers in the field can lose sight of this general rule because they frequently face exceptions. While the *Gant* opinion narrows the circumstances under which law enforcement personnel are allowed to conduct searches incident to arrest, it does not affect the other established exceptions, such as protective sweeps, hot pursuit, Terry frisks, exigent circumstances, inventory searches and the like. For more on the case, see the attached opinion from the Court website:

<http://www.supremecourtus.gov/opinions/08pdf/07-542.pdf>

## CONTACTS

For additional information, please contact:

### **Bob Lombard**

SVP & Regional Director  
Willis HRH Pooling Practice  
1755 E. Plumb Lane, Suite #269  
Reno, NV 89502  
775 323 1656 Ext. 19 (Office)  
775 858 6335 (Cell)  
lombard\_bj@willis.com

### **David F. Brawner**

AVP & Sr. Risk Control Consultant  
Willis HRH Pooling Practice  
26 Century Boulevard  
Nashville, TN 37214  
615 872 3536 (Office)  
615 587 1908 (Cell)  
dave.brawner@willis.com