

Arizona v. Gant:

IT'S NOT AS BAD AS YOU HAVE HEARD

Every so often, a Supreme Court case comes along that causes a great deal of fluff and fuss from the defense bar, and a simultaneous worry among police officers and prosecutors as to what effect it will have on the way searches or other police practices have been handled. This is understandable, since officers are trained to deal with situations according to established procedure, which is based on training received, which is drafted to comply with established statutory and case law. The whole principle of *stare decisis*, more familiar to lawyers but not alien to the police officer either, is based on the idea that the law should ideally remain the same over time. It should be dependable so that those who must enforce the law can know what it means and act within its limits. Cases which upset the way things have been done in the past, that go against an officer's training and experience, are unsettling to say the least.

/Robert E. Stephens, Jr., Assistant Commonwealth's Attorney, 34th Judicial Circuit

The recent United States Supreme Court case of *Arizona v. Gant* (Slip Opinion, October Term, 2008, Decided April 21, 2009) is such a case. Officers, prosecutors and an extensive number of lower courts have routinely relied upon an expansive reading of *New York v. Belton*, which seemed to permit vehicle passenger compartment searches, as a search incident to the arrest of a vehicle occupant, under almost any circumstances. *Arizona v. Gant* reins in this largely accepted, previous reading of *Belton*, but it does not totally eliminate vehicle searches incident to an occupant's arrest. *Arizona v. Gant* rather gives new guidelines on how such searches are to be conducted consistent with the Fourth Amendment to the U.S. Constitution. So, with all professional candor, *Arizona v. Gant* is undeniably not as bad as you have heard, but it does present some concerns in its own way.

Previous Case Law and the Ruling in *Arizona v. Gant*:

The first and basic rule, of course, is that the Fourth Amendment to the U.S. Constitution normally prohibits searches and seizures without an intervening check of a neutral judge or magistrate. There are "a few specifically established and well-delineated exceptions," to this rule, among which is a search incident to a

subject's lawful arrest. The Court in *Chimel v. California*, 395 U.S. 752 (1969) had "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." *New York v. Belton* 453 U.S. 454 (1981) was the Court's application of the *Chimel* ruling in the context of an automobile search.

The ruling in *Arizona v. Gant* grew out of what the High Court considers an expansive reading, which many lower courts, and also prosecutors and police trainers, had taken of *Belton*. The Court in *Belton* had said if an officer lawfully arrested "the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment

of the automobile' and any containers therein." The Opinion of the Court in *Arizona v. Gant* noted that Justice Scalia, who, among others, had previously taken aim at this extensive reading of *Belton*: "[A]lthough it is improbable that an arrestee could gain access to weapons stored in his vehicle after he has been handcuffed and secured in the backseat of a patrol car, cases allowing a search in 'this precise factual scenario...are legion.'" Such searches had even been found permissible when the subject had already left the scene.

The United States Supreme Court in *Arizona v. Gant* now holds that such expansive readings of *Belton* went too far. What then is the officer to do during a traffic stop that leads to an arrest? When is a search of the passenger compartment of a vehicle permitted as a search incident to arrest?

Analysis Post-*Gant* of Vehicle Searches Incident to Arrest:

The officer arresting a subject who was an occupant of a vehicle at the time of arrest must now perform a two-step analysis before searching the interior of the vehicle as a "search incident to arrest" exception to the warrant requirement. First, he or she must determine if the *Belton* rule still applies. In other words, does an unsecured arrestee (thankfully a rare circumstance, as discussed below) have access to (i.e. are they within reaching distance

of) possible weapons or destructible evidence in the vehicle at the time of the search? If so, *Belton* still applies and the officer can search the passenger compartment of the vehicle and any containers found therein under the search incident to arrest exception to the warrant requirement. This is a matter of circumstances on the scene. *Belton* itself involved an officer who alone stopped and ultimately searched a vehicle with four arrested occupants, each of whom he could not restrain because he had only one set of handcuffs. Several factors could go to answering this question, including the number of officers versus the number of arrestees, and whether the arrestees can physically be restrained. It goes without saying that the officer cannot simply choose not to restrain the arrestees to meet *Belton's* requirements, but under the right, rare circumstances (always unfortunate for the officer facing them) *Belton* still can apply.

Second, if a *Belton* scenario is not present, officers may still, according to *Gant*, search the passenger compartment (and any containers therein) *if the officer reasonably believes he can expect to find evidence relevant to the crime of arrest*. This is important, and a saving grace in the *Gant* opinion. By so ruling, the Court in *Gant* recognizes the unique privacy concerns in the automobile context. As the Court noted, individuals have a privacy interest in the passenger compartment of their vehicle (and every container in the passenger compartment such as luggage, bags, etc.) which is deserving of constitutional protection, but which is less substantial than in the home. Searches of the passenger compartment (and containers within) are permissible under *Arizona v. Gant*, and thus the Fourth Amendment, so long as the officer reasonably believes he can expect to find evidence related to the crime of arrest.

What does this mean practically? It means an officer stopping a motorist for driving under the influence could reasonably search the vehicle for evidence of drugs or alcohol. *Arizona v. Gant* also means that an officer who stops a motorist on a traffic violation and who discovers an occupant of the vehicle has an outstanding warrant, can only do a search incident to arrest looking for items related to the outstand-

ing warrant charge, *if* he reasonably believes he could actually find any such evidence. It also means an officer who has probable cause to arrest vehicle occupants on a drug charge can then search the vehicle for drugs and related contraband. (This last scenario would be permissible anyway, under *U.S. v. Ross*, which permits a search of any part of a vehicle where evidence may be found if the officer has probable cause to believe the vehicle contains evidence of a crime, which need not be the crime of arrest.)

The particulars are going to be as varied as the circumstances officers meet on the street, but *Arizona v. Gant* should not prove an insurmountable hindrance on the ability of officers to search vehicles when appropriate without a warrant. Never forget too, that should neither *Belton* nor *Gant* (or any other warrantless search case) seem to apply, the officer with probable cause that a crime has been committed could and should always seek and receive a warrant. The warrant process, while rather cumbersome, is always the preferred first step in search scenarios, with the absence of a warrant being the exception, not the rule. Also, most evidence in the vehicle could eventually be obtained via an appropriate inventory search of the vehicle if the vehicle is properly impounded. Again, however, even an inventory search should not become a pretext, and inventory searches should proceed according to department guidelines, including the use of a search warrant for objects not in plain view during the inventory (for example: the interiors of luggage or sealed containers).

This last point raises an important note about *Gant*-type searches for evidence from the crime of arrest. If the officer conducting such a *Gant* search locates a container, the contents of which are not in plain view, and which could not reasonably contain evidence, he is deliberately searching for, he must obtain a search warrant to open the container. The safest road is always to obtain a search warrant anyway, and should be the first line of attack in such situations. A minor inconvenience at the beginning is better than the major issue of letting the criminal ultimately get away because of a constitutional violation.

Where Do We Go From Here?

The Court majority in *Gant* (those who joined the Opinion of the Court plus Justice Scalia, who agreed with the Court's Opinion in the outcome but wrote a separate, concurring opinion) seemed to be concerned primarily with ensuring police did not behave as if they have an entitlement to search vehicles at their mere whim. The bright line rule, as *Belton* had been read, would have been preferable to remain the law, since it did not infringe heavily on citizens' privacy interests, worked only in vehicles with occupant(s) already under arrest and was easy for officers and courts to measure against real world facts. The Court's new course in *Gant* is going to be none of these things. *Gant* will be neither easy to enforce nor to follow. But neither does *Gant* totally cripple officers' ability to search vehicles without a warrant if circumstances on the ground require such action.

A brief word should be said about the liability of officers sued for violations of the Fourth Amendment after *Gant*. The High Court has at least addressed that issue for officers who acted prior to the *Gant* ruling, opining: "Because a broad reading of *Belton* has been widely accepted, the doctrine of qualified immunity will shield officers from liability for searches conducted in reasonable reliance on that understanding." Officers following the old reading of *Belton*, however, after the release of *Arizona v. Gant*, by implication may face civil liability for their actions. That fact alone makes *Gant* a case officers should know about and be prepared to follow accurately.

Because of the circumstance-based, case-specific nature of each analysis under *Gant*, it is inevitable that lower courts, and ultimately the U.S. Supreme Court, will have to feel out the law as to what is deemed to be within the arrestee's area of control for purposes of *Gant*, and when an officer reasonably believes he may find evidence of the crime of arrest in the vehicle. The only thing officers can do is try to work within the guidelines of *Gant* unless and until a new opinion of the Court directs otherwise. J

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KLCC VEHICLE SEARCH MODEL POLICY

Related Policies: Biased-Based Policing

This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only be for the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.

Applicable State Statutes:
CALEA Standard: 1.2.4
Date Implemented: Review Date:

I. Purpose: The purpose of this policy is to direct officers in their contacts with motor vehicles.

II. Policy: The policy of this department is to protect and serve the constitutional rights of all citizens when conducting vehicle stops and searches while balancing the needs of law enforcement in solving crime for the protection of the community.

III. Definitions:

A. Motor Vehicle: Any motorized vehicle that is capable of movement to include motor homes.

B. Probable Cause: (search): Facts and circumstances based upon observations or information that would lead a reasonable law enforcement officer to believe that evidence of a crime exists and that the evidence exists at the place to be searched.

C. Probable Cause: (arrest): Facts and circumstances based upon observations or information that would lead a reasonable law enforcement officer to believe that a crime has been or is being committed and the person to be arrested is the one who is or has committed the crime.

D. Reasonable Suspicion (temporarily detain): Facts and circumstances based upon observations or information, short of probable cause but based upon articulated facts that would lead a reasonable law enforcement officer to believe that criminal activity is afoot.

E. Reasonable Suspicion (frisk): Facts and circumstances based upon observations or information, short of probable cause but based upon articulated facts that would lead a reasonable law enforcement officer to believe that a person who is lawfully stopped is in possession of a weapon.

F. Frisk (weapon): A limited type of search, the limit being to those areas capable of holding a weapon and located within the subject's immediate area of control.

IV. Procedures:

A. Vehicle Stops - Vehicles may be lawfully stopped under the following circumstances:

- a. Reasonable-Suspicion Based Stop - where an officer has articulated facts that support a belief that criminal activity is occurring and that a vehicle is involved, the officer may stop the vehicle to investigate further.

The stop may continue as long as the officer diligently investigates to confirm or dispel his or her suspicion that criminal activity is occurring and the occupant(s) of the vehicle are involved.

b. Probable-Cause Based Stopped-Traffic Violation - where an officer has probable cause to believe that a violation of the motor vehicle code has occurred, he may stop the vehicle and detain it for a reasonable amount of time while the citation is completed.

c. Probable-Based Stop Arrest/Search - where an officer has probable cause to believe that a person in a vehicle has committed a crime or probable cause to believe that a vehicle contains evidence of a crime or contraband, the officer may stop the vehicle to arrest the occupant (in the arrest situation), or stop the motor vehicle to search the vehicle in the search scenario.

d. Consensual Contact - An officer may approach any stopped vehicle (a vehicle which is stopped by the operator's own volition prior to police contact) and attempt to speak to person(s) in the vehicle. The officer has no power to force compliance with his or her attempt to contact in the consent situation.

B. Ordering Persons from a Vehicle: An officer may order any occupant of a lawfully stopped vehicle to exit the vehicle during a lawful stop.

C. Frisk of a Vehicle: An officer who has reasonable suspicion to believe that a lawfully stopped vehicle contains a weapon may search the vehicle subject to the following limitations:

- a. The search is limited to a subject's immediate area of control which would be the passenger compartment of the vehicle.
- b. The search is limited to those areas in the passenger compartment capable of holding a weapon.

D. Search Incident to Arrest (Vehicle): Following the lawful arrest of a subject from a vehicle or who had exited the vehicle just prior to arrest, officers may search the vehicle incident to arrest, subject to the following limitations:

- a. The arrest must be lawful and must be a full-custodial arrest.
- b. The search must take place at the time of the arrest.
- c. A search incident to arrest may not take place once the arrestee is secured in handcuffs and secured in a law enforcement vehicle unless the officer has reasonable grounds to believe that the vehicle contains evidence of the particular crime for which the subject was arrested.

d. The search incident to arrest is limited to the arrestee's immediate area of control (passenger compartment only), but is a thorough search.

e. Unlocked containers within the vehicle may be searched irrespective of who the containers belong to.

f. The person or other occupants may not be

frisked or searched simply because another person in the vehicle has been arrested.

E. Consent Search of Vehicle: An officer may ask the person in control of any lawfully stopped vehicle or a vehicle that is not moving at the time of a consensual contact for consent to search the vehicle. Consent searches are subject to the following limitations:

- a. The consent must be voluntary.
- b. Written consent is not required under federal law; however written authorization or a mobile video recording that documents consent will assist in proving the voluntary nature of the consent.
- c. The scope of the search is within the control of the person granting consent, thus, the consenting party can direct the area an officer is allowed to search, as well as how long the search may last.

d. Under the rules of consent, there is no requirement that officers inform a person of their right to refuse the officer's request. However, a person who is told of their ability to refuse will be less likely to make out a claim that their consent was not voluntary.

F. Probable-Cause Searches of Vehicles (Carroll Doctrine/Motor Vehicle Exception to the Warrant Requirement/Mobile Conveyance Exception) An officer may, without a warrant, search a motor vehicle when the officer can articulate probable cause to believe that the vehicle contains evidence of a crime or contraband subject to the following limitations:

- a. In cases where the vehicle was stopped or parked prior to contact by the police, the area where the vehicle is parked is not private property such that officers would have to obtain a warrant to gain access to the property itself.
- b. The vehicle is capable of movement. This does not mean that the vehicle is occupied; it simply means that the vehicle could be started and driven off with the turn of a key.
- c. Officers may search the entire vehicle unless the information known to the officer indicates that the evidence or contraband is located in a specific place within the vehicle in which case the scope of an officer's search would be limited to the specified area.
- d. Officers may only search those areas within the vehicle capable of containing the item being sought. For example, an officer looking for stolen stereo equipment would exceed the scope of a probable cause search if he or she were to search the ashtray for the stolen equipment.

G. Drug-Sniffing Canine: Where officers have a lawfully stopped vehicle, they may use a drug-detection canine to sniff the exterior of the vehicle as long as the sniff occurs within the duration, from a time standpoint, of the purpose that initially justified the stop. For example, if the vehicle was stopped for speeding, the canine would have to arrive and conduct the sniff in the

time it would take to write the citation.

- a. If the stop must be prolonged beyond its justification to wait for the canine to arrive, the vehicle must be released and the canine cancelled.
- b. If the canine conducts a sniff in accordance with this policy and alerts on the vehicle, the officer has probable cause and may conduct a probable-cause search of the vehicle.
- c. Putting a canine inside a vehicle is a search for Fourth Amendment purposes and must not be done unless the officer can support the search by probable cause to believe the vehicle contains contraband.

H. Inventory Searches: An inventory search is not a search for evidence or contraband and is not a search with an investigative purpose. The primary objective of these searches is to protect the property of persons whose vehicles

are towed at the direction of law enforcement. These searches also have the objective of protecting law enforcement from false claims with respect to vehicles that are towed at the direction of law enforcement. Inventory searches are subject to the following limitations:

- a. All vehicles towed at the direction of an officer of this agency, irrespective of the reason for the tow, shall be inventoried in accordance with this policy.
- b. Officers will note in their report any items of value that are within the vehicle.
- c. All compartments in the vehicle which the officer has access to, including those areas which the officer can open with a key or by activating a lock to the unlock position, without causing damage shall be searched. This includes the trunk, glove compartment or containers of any type that are present within the vehicle at the time of the tow.

d. If an item of extreme value is located within the vehicle and is removable, the officer shall take the item for safekeeping and either turn the item over to the owner or, when that is not possible, take the item to the department to be held for safekeeping in accordance with the provisions of the property and evidence policy.

I. Community Caretaking Search: Where officers have reason to suspect that a vehicle contains a dangerous item, which, if left unattended will endanger public safety, the officer may search the vehicle to remove the dangerous item for safekeeping. An officer removing such an item should protect the owner's property interest by ensuring that the item is stored in accordance with department procedures relating to property and evidence.

VEHICLE INVENTORY

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With the passage of *Arizona v. Gant*, law enforcement agencies are looking for legal ways to search vehicles when appropriate. Inventory searches, when a vehicle is impounded and towed, are one method, but there are certain parameters that must be followed to ensure that items found during an inventory are admissible.

In *South Dakota v. Opperman*, the Supreme Court noted the vehicles often are taken into police custody for various reasons. The Court stated that the "authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge." Further, when "vehicles are impounded, local police departments generally follow a routine practice of securing and inventorying the automobiles' contents. These procedures developed in response to three distinct needs: the protection of the owner's property while it remains in police custody, the protection [for] the police against claims or disputes over lost or stolen property, and the protection of the police from potential danger." Such actions fall under the "community caretaking functions" of *Cady v. Dombrowski*. The Court held that "inventories pursuant to standard police procedures are reasonable." In the *Opperman* case, the Court noted that there was no indication that the inventory "was a pretext concealing an investigatory police motive." The Court found the inventory appropriate under the Fourth Amendment.

A few years later, in *Colorado v. Bertine*, Boulder police had Bertine's car towed to an impoundment lot following his arrest for driving under the influence. Another officer, acting in accordance with agency policy, did an inventory of the contents and opened a closed backpack inside the vehicle. There, the officer found a quantity of cocaine, cash and paraphernalia. Bertine was charged and tried, but Colorado ruled that the search violated the Fourth Amendment and suppressed the evidence. The Supreme Court, however, ruled that there was no indication that the police, "who were following standardized caretaking procedures, acted in bad faith or for the sole purpose of investigation." The Court ruled the evidence should have been admitted, so long as the search was done "according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity."

In *Florida v. Wells*, the Court, however, ruled that an inventory that involved the opening of closed containers in a vehicle, was "insufficiently regulated to satisfy the Fourth Amendment." In *Wells*, the Court stated that such standardized criteria or established routine was necessary to prevent "individual police officers from having so much latitude that inventory searches are turned into a ruse for a general rummaging in order to discover incriminating evidence." (The Court noted that an "all or nothing" policy was permissible, however.)

Kentucky courts, however, have put more stringent rules on towing and inventorying vehicles.

In *Wagner v. Commonwealth*, the Kentucky Supreme Court ruled that a vehicle may be impounded without a warrant in only four situations:

1. The owner or permissive user consents to the impoundment.
2. The vehicle, if not removed, constitutes a danger to other persons or property or the public safety and the owner or permissive user cannot reasonably arrange for alternate means of removal.
3. The police have probable cause to believe both that the vehicle constitutes an instrumentality or fruit of a crime and that absent immediate impoundment the vehicle will be removed by a third party.
4. The police have probable cause to believe both that the vehicle contains evidence of a crime and that absent immediate impoundment the evidence will be lost or destroyed.

The Court noted that "[s]o long as the only potential danger that might ensue from non-impoundment is danger to the safety of the vehicle and its contents, no public interest exists to justify impoundment without the consent of its owner or permissive user."

If a vehicle is lawfully impounded, however, the Court ruled that an inventory is "impermissible unless the owner or permissive user consents or substantial necessities grounded upon public safety justify the search." To complicate matters, *Wagner* was overruled, but only in part, by *Estep v. Commonwealth*, which affirmed that if officers have probable cause to believe that the vehicle contains contraband or evidence of a crime, a search of the entire vehicle is permitted. (*U.S. v. Carroll* and *U.S. v. Ross*.) *Estep* also overturned an earlier case, *City of Danville v. Dawson*.

So, where does that leave Kentucky law enforcement agencies? Reading the Kentucky case law in conjunction with federal case law, a Kentucky law enforcement agency that uses inventory searches must have a formal policy that provides guidance to officers. It should indicate, in particular, that all vehicles impounded must be inventoried, with the intent to remove any individual discretion as to which vehicles to inventory. (Documentation to prove this is done also is critical.) A decision to inventory is not a search to discover evidence, although if evidence is found during a proper inventory, it will be admissible. It must indicate that a vehicle cannot be impounded simply because a subject inside the vehicle is arrested, but may only be impounded subject to the limitations provided by *Wagner*. In effect, that indicates a vehicle may only be impounded when it is actually necessary to do so, for public safety reasons, and if that is done, the officer should maintain documentation as to the reason for the decision to impound. *Estep* clarified, as well, that a *Carroll* search, based upon probable cause that the vehicle contains contraband or evidence, is also a separate legal justification to search a vehicle, whether impounded or not.



Kentucky law enforcement agencies are encouraged to contact the Kentucky Department of Criminal Justice Training, Legal Section, at docjt.legal@ky.gov, with any questions related to inventory or other legal matters.

How Does it Affect Us?

A LOOK AT ARIZONA V. GANT'S AFFECTS ON KENTUCKY'S AGENCIES

/Kelly Foreman, Public Information Officer



Questions among officers and police administrators have been swirling since the United States Supreme Court decided on April 21 that search and seizures as officers knew they would change.

"When something comes out from the Supreme Court, we may get notification through the Department of Criminal Justice Training or the Kentucky League of Cities, but this decision has really seemed to have gotten the attention of everybody," said Wilmore Police Chief Steve Boven.

The decision, best known around roll-call rooms as *Gant*, involved an Arizona case in which officers used an unrelated charge to stop and arrest a suspected drug dealer in an effort to search his vehicle without a warrant. The Supreme Court ruled that the Fourth Amendment requires officers to prove either a threat to their safety or a need to preserve evidence

relating to the crime for which the suspect was arrested to search a vehicle without a warrant.

So what does this mean for Kentucky law enforcement? Assistant Fayette County Commonwealth's Attorney Cindy Rieker said the true effects have yet to be played out.

"What really changed for them is the whole search incident to arrest essentially is gone for a vehicle," Rieker said.

In Fayette County, Rieker said she has begun to see court hearings related to the *Gant* decision almost weekly, and some judges are applying the case retroactively. Others are applying the previous but similar case of *New York v. Belton* – which allowed passenger-compartment searches incident to arrest – on a much narrower scale, she said.

"I think there is just so much that is just unknown with this case, and it will just be a matter of courts making decisions," she said.

That ambiguity has some officers question-

ing what is allowable during a traffic stop without search incident to arrest.

"It is vague," Boven said. "I know that, putting myself out there in the street – because I still work the street, not as much as I used to – but when you are stopping a car and you are getting a person out of a car, you may be handcuffing them for your own protection and he may not even be under arrest yet. So, that area is vague in what you can do and what you cannot do. And, if you are there by yourself, it just leaves a lot of gray area."

Because of that gray area, Rieker said officers are going to have to go back to the basics in most cases.

"What they are going to have to do is go back to a time before all of this *Gant* was there and before *Belton* which was, you have to be able to articulate the reason why you believe evidence might be in that car," she said.

Owensboro Police Chief Glenn Skeens agreed.

"I think it was the initial reaction by law enforcement when we first read it, that it could really impede our operations. But I think once we step back and the officer articulates the probable cause, it may take an extra measure to get a search warrant when needed, but it has not been anything we can't live with or still be proactive," he said.

When the ruling was handed down, Skeens said he met with local prosecutors and the county judge to discuss what the changes meant for Owensboro. From there, the agency implemented roll-call training to explain those changes to frontline officers. So far, Skeens said he has not had any negative or concerning feedback from the ranks.

In Elizabethtown, Police Chief Ruben Gardner said after adjusting the city's policy in ac-

cordance with *Gant*, a meeting was conducted with supervisors to address the new policy and pass it on to patrol.

CAN WE STILL PERFORM AN INVENTORY SEARCH IF WE SUSPECT THERE IS SOMETHING MORE IN THE VEHICLE?

DOES INVENTORY WORK WHEN THE AGENCY DOES NOT DO THE TOW?

CAN I STILL SEARCH INCIDENT TO ARREST WITHOUT A WARRANT?

HOW DOES THIS AFFECT MY CASES THAT WERE PENDING PRIOR TO THE DECISION BEING MADE?

us a little more inconvenience, but it does safeguard the case for prosecution." Possible drug activity ongoing in the stopped vehicle is one area Henderson County Sheriff Ed Brady said he believes could be demonstrated to the court as an emergency case in which a search could be conducted post-arrest for officer and community safety.

"You know there are meth labs being carried around in vehicles, for example, if a car starts smoking," Brady said. "If you get a guy who you arrested for drunk driving and while you are getting the paperwork together and all that, you see smoke start coming from the car, certainly we are going to get in the car and find out what the problem is and things of that nature. But other than a situation like that, we're going to do what the Supreme Court tells us

to do."

While it is going to take some minor modifications from standard practice to comply with the ruling, Brady said one thing his officers still will be doing is a cursory search of the interior prior to arrest to ensure their safety.

Henderson County is in the process of reviewing and rewriting several policies with the intent to seek accreditation from the Kentucky Association of Chiefs of Police. One of those policies will include the practice of performing an inventory search on a vehicle impounded after its driver has been arrested.

However, Brady questioned how the court will view inventory searches and even K-9 searches in light of the *Gant* ruling.

"We want to search as often as we legally can, and I plan to get some guidance in writing from our county attorney on how to do that," Brady said. "Our policy down here is going to be that if that person has been placed under arrest, other than making a cursory search for

cordance with *Gant*, a meeting was conducted with supervisors to address the new policy and pass it on to patrol.

"As far as any complications from the decision, I have heard none," Gardner said. "It is a slight limitation on what was already, I thought, a broad court ruling. Personally I don't see that it is going to have any great impact on the city of Elizabethtown."

Most vehicle searches in Elizabethtown are done by consent, Gardner said. If it is a serious, felony case then the agency deals with searches by warrant.

"We don't jeopardize a case with something that might be reversed down the road," he said.

However, Gardner recognized that drug cases resulting from traffic stops are one area agencies may see a slight decrease in arrests.

"But, if you have probable cause to believe there are narcotics in the car, you can still acquire a search warrant," he said. "It just causes

our safety, we are going to get a search warrant in every possible situation that we can."

St. Matthews Police Chief Charles Mayer said that obtaining a warrant always is the best policy. In fact, Mayer said he does not think *Gant* will make much of a difference for officers, like him, who remember a time before search incident to arrest was allowed in Kentucky.

"We would hang our hat on the tow of the car if we made an arrest," Mayer said of one avenue he pursued if there was a feeling that the vehicle needed to be searched. "Of course we did plain sight if we could see anything laying there the driver had access to."

Rieker believes there still are several options, such as the inventory search, that still are on the table.

"We are encouraging our officers to use other methods," she said. "Consent is big. Probable cause – a lot of times officers know things they do not want to reveal, particularly in narcotics. ... They need to be utilizing their drug dogs much more than they are."

However, Rieker cautioned officers not to extend traffic stops beyond their normal scope in order to get a K-9 on scene. The most important thing officers need to understand is why they search something, and then be able to articulate that reasoning to the court.

Being flexible to the changes that come down from the Court is just a part of law enforcement, Boven said.

"We are not a police state," he said. "We are still answerable to the citizens and our structure that we have in our judicial system."

"I think it is just a matter of changing the way that you do things," Rieker said. "It is going to hamper investigations to some degree because it was easy to arrest and search the vehicle. That was a big tool." J