JUSTICE AND PUBLIC SAFETY CABINET

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Dear Law Enforcement Executive:

On April 21, 2009, the United States Supreme Court issued its decision in the case of Arizona v. Gant. This case questioned whether officers had broad authority to search a vehicle once the driver or a passenger was arrested. In the past, our courts have held the rule in New York v. Belton allowed for such searches, regardless of the charges placed against the driver or other occupant. Gant has limited such searches, however.

Under the recently decided guidelines, officers may only search a car incident to arrest if either of two circumstances exists:

1. the arrestee is within reaching distance of the passenger compartment at the time of the search; OR
2. it is reasonable to believe the vehicle contains evidence of the offense for which the driver/other occupant was arrested.

Enclosed is a case synopsis provided by the staff of the Legal Training Section describing the facts of the case and the Supreme Court's holding. We have added notes to help understand what is and is not impacted by this decision.

If you have any questions concerning this case, or any other legal issue question, please contact the Legal Training Section at 859-622-3801 or by email at docjt.legal@ky.gov.

Sincerely,

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Arizona v. Gant
--- U.S. --- (2009)
Decided April 21, 2009

FACTS: On Aug. 25, 1999, Tucson (AZ) officers received a tip that drugs were being sold from a particular address. Officers did a knock and talk, and spoke to Gant, who identified himself and stated he expected the owner to return later. The officers left and checked Gant's record, and learned that he had an outstanding warrant for driving on a suspended OL, and that his license was still suspended.

Officers returned later, and arrested several occupants. Gant then arrived, driving, and got out of the car. The officers arrested and handcuffed Gant, first contacting him when he was 10-12 feet from his car. When additional officers arrived, Gant was secured in the back of a patrol car, handcuffed. The officers searched the car, finding a gun and cocaine in a jacket on the backseat of the car. Gant was charged with possession of the cocaine and possession of drug paraphernalia (the plastic bag). He moved for suppression, arguing that Belton[1] "did not authorize the search of his vehicle because he posed no threat to the officers after he was handcuffed in the patrol car and because he was arrested for a traffic offense for which no evidence could be found in his vehicle."

The trial court denied his motion, but ultimately, the Arizona Supreme Court "concluded that the search of Gant's car was unreasonable within the meaning of the Fourth Amendment." Arizona sought certiorari, and the U.S. Supreme Court granted review.

ISSUE: Does the Fourth Amendment require law enforcement officers to demonstrate a threat to their safety or a need to preserve evidence related to the crime of arrest in order to justify a warrantless vehicular search incident to the arrest conducted after the vehicle's recent occupants have been arrested and secured?

HOLDING: Yes

DISCUSSION: The Court reviewed, at length, the precepts of Belton and Chimel v. California.[2] The Court acknowledged that the Belton opinion "has been widely understood to allow a vehicle search incident to the arrest of a recent occupant even if there is no possibility the arrestee could gain access to the vehicle at the time of the search" including situations where the arrested subject has left the scene. Further, the Court noted, "[i]n many cases, as when a recent occupant is arrested for a traffic violation, there will be no reasonable basis to believe the vehicle contains relevant evidence." In the case at bar, the Court stated that "[n]either the possibility of access nor the likelihood of discovering offense-related evidence authorized the search in this case." The Court specifically noted that in this case, there were five officers present, with three arrested subjects who were already secured in vehicles.

The Court ruled that Belton and Thornton "permit an officer to conduct a vehicle search when an arrestee is within reaching distance of the vehicle or it is reasonable to believe the vehicle contains evidence of the offense of arrest.[3]" In addition, searches are permitted "when safety or evidentiary concerns demand."

The Court concluded, "officers may search a vehicle when genuine safety or evidentiary concerns encountered during the arrest of a vehicle's recent occupant justify a search" and "[c]onstruing Belton broadly to allow vehicle searches incident to any arrest would serve no purpose except to provide a police

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[1] New York v. Belton, 453 U.S. 454 (1981); See also Thornton v. U.S., 541 U.S. 615 (2004).
[2] 395 U.S. 752 (1969)
[3] The term - offense of arrest - means the offense for which the individual is initially being arrested. In Gant's case, that would be the warrant for driving on a suspended OL, not the drug offenses for which he was ultimately charged.

entitlement, and it is anathema to the Fourth Amendment to permit a warrantless search on that basis." The Court stated:

> Police may search a vehicle incident to a recent occupant's arrest 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. When these justifications are absent, a search of the arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies.

The Court upheld the decision of the Arizona Supreme Court.

FULL TEXT OF OPINION: **http://www.supremecourtus.gov/opinions/08pdf/07-542.pdf**

SPECIAL NOTES:

A. Although this case limits the application of Belton and Thornton, it does not affect a Carroll[4] search, a consent search, or a frisk of the vehicle for weapons pursuant to Michigan v. Long[5].
B. Inventory of vehicles may be performed when the agency has a *proper inventory policy, and only when there is a legitimate need to actually tow the vehicle.*[6] Under City of Danville v. Dawson, the Court agreed that a vehicle should only be towed when it is actually necessary to do so, and that an owner or operator should be given the option to find an alternative way to secure the vehicles. Specifically, the Court stated that the "practice of impounding vehicles following arrests for mere traffic violations is utterly unnecessary and indeed, is of questionable legality."[7] In addition, Wagner v. Commonwealth [8] controls in Kentucky, and states 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; or
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 Wagner court further stated: "[i]f 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 of the vehicle without the consent of its owner or permissive user. Because the vehicle is legally in his custody the driver, even though in police custody, is competent to decide whether to park the vehicle in a "bad" neighborhood and risk damage through vandalism or allow the police to take custody. Only when the vehicle if not removed poses a danger to other persons, property or the public safety does there exist a public interest to justify impoundment if the owner or permissive user is unable to reasonably arrange for a third party to provide for the vehicle's removal."

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[4] Carroll v. U.S., 267 U.S. 132 (1925).
[5] 463 U.S. 1032 (1983).
[6] See South Dakota v. Opperman, 428 U.S. 364 (1976).
[7] 528 S.W.2d 687 (Ky. 1975). Both Wagner and Dawson, are no longer valid on another point of law, as indicated by Estep v. Com. , 663 S.W.2d 213 (Ky. 1983).
[8] 581 S.W.2d 352 (Ky., 1979).