

Arizona vs grant case



On August 25, 1999, acting on an anonymous tip that the residence at 2524 North Walnut Avenue was being used to sell drugs Tucson police officers Griffith and Reed knocked on the front door and asked to speak to the owner. Gant answered the door and, after identifying himself stated that he expected the owner to return later. The officers left the residence and conducted a records check, which revealed that Gant's driver's license had been suspended and there was an outstanding warrant for his arrest for driving with a suspended license.

When the officers returned to the house that evening they found a man near the back of the house and a woman in a car parked in front of it. After a third officer arrived they arrested the man for providing a false name and the woman for possessing drug paraphernalia. Both arrestees were handcuffed and secured in separate patrol cars when Gant arrived. The officers recognized his car as it entered the driveway and Officer Griffith confirmed that Gant was the driver by shining a flashlight into the car as it drove by him. Gant parked at the end of the driveway got out of his car and shut the door.

Griffith who was about 30 feet away called to Gant, and they approached each other meeting 10 to 12 feet from Gant's car. Griffith immediately arrested Gant and handcuffed him. Because the other arrestees were secured in the only patrol cars at the scene Griffith called for backup. When two more officers arrived they locked Gant in the backseat of their vehicle. After Gant had been handcuffed and placed in the back of a patrol car two officers searched his car One of them found a gun and the other discovered a bag of cocaine in the pocket of a jacket on the backseat.

Gant was charged with two offenses possession of a narcotic drug for sale and possession of drug paraphernalia the plastic bag in which the cocaine was found He moved to suppress the evidence seized from his car on the ground that the warrantless search violated the Fourth Amendment Among other things Gant argued that Belton 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.

I think that to better prepare for such an inquiry officers should focus on articulating the reasonableness of any such search based on the following facts and circumstances: (1) Distance: The distance between the arrestee and the place to be searched. 2) Restraints: Whether the arrestee was handcuffed or otherwise restrained what kind of Restraints were used and whether the arrestee was handcuffed in the front or back (3) Display of guns or other weapons by officers: Whether the police had weapons drawn or pointed at the arrestee or other suspects (4) Positioning: Whether the police were positioned so as to block the arrestee suspects and bystanders from the area to be searched. (5) Access: The ease of access to the area or container itself to include whether a container is open or closed locked or unlocked. 6) Numbers: The number of officers present versus the number of arrestees, suspects, or bystanders. (7) Arrestee's conduct: Attempts made by the suspect before during, or after the arrest to access the area to be searched. (8) Reasonable change in circumstances: Do police need to move the arrestee away from a dangerous environment into another private area or

can police articulate a legitimate need to retrieve something such as the arrestee's shoes or clothing?

Searches of a Vehicle Following Arrest of an Occupant or Recent Occupant:
Two Potential Justifications Arrestee could access the vehicle Gant held that police might search a vehicle incident to arrest when the arrestee an occupant or recent occupant of the vehicle is unsecured and within reaching distance of the passenger compartment at the time of the search. The Court noted, 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. In such a rare case however an SIA of the passenger compartment would be reasonable under the Fourth Amendment.

Since Chimel justifies this search officers may search for weapons any evidence of any crime and means of escape. Offense related evidence might be in the vehicle. Even if the arrestee can no longer access the vehicle's passenger compartment the Court held that an SIA will also be permitted when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle. In many cases, such as arrests for traffic violations or outstanding arrest warrants there will be no reasonable basis to believe that the vehicle contains relevant evidence of the crime.

In other cases however such as arrests for possession of controlled substances the basis of the arrest will supply an acceptable rationale for searching the arrestee's passenger compartment and any containers inside. In a case where the search is justified by the possibility of locating offense related evidence in the vehicle officers are limited to searching only those

places in the passenger compartment where the offense related evidence might be located. How to define the reasonable to believe standard? Is it the same as probable cause or is it something less?

One must compare the search incident to arrest exception in *Gant* to another firmly established search warrant exception to find the most likely answer. In *U. S. v. Carroll* the Supreme Court established the mobile conveyance exception to the Fourth Amendment search warrant requirement. Under this exception an officer may search a readily mobile conveyance without a warrant upon probable cause that it contains evidence or contraband. Once this standard is met the officer may search any area of the vehicle to include the trunk compartment if that area may contain the objects of the search.

The rule in a *Gant* search incident to arrest however first requires a lawful custodial arrest of an occupant or recent occupant of a vehicle. A search of the passenger compartment incident to arrest is then justified by a reasonable belief that evidence of the crime of arrest might be in the car. If *Gant*'s reasonable to believe standard is equal to probable cause then the Court has created an M. C. Escher-like puzzle. An officer who has made a custodial arrest and has a reasonable belief equated to probable cause that evidence of the crime of arrest might be in the car could search only the passenger compartment.

An officer who has made no arrest but has probable cause to believe that evidence of any crime is in the car could search the entire vehicle. In other words the officer who meets the higher standard custodial arrest probable cause for particular evidence gets to search less but the officer who meets

the lesser standard probable cause for any evidence can search more. At best the Court would have created a new search warrant exception that is instantly swallowed by another that has existed for almost 85 years. The better explanation is that reasonable means. reasonable. There is no need to equate reasonable to believe to a percentage or particular level of probability in fact the Supreme Court has stated the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. Rather as in issues regarding an officer's use of force the proper application of the reasonableness standard requires careful attention to the facts and circumstances of each particular case and must be judged from the perspective of a reasonable officer on the scene.

The ultimate question should be whether another reasonable officer if confronted with the same facts and circumstances could believe that evidence of the arrestee's crime might be found in the vehicle the arrestee recently occupied. Facts and circumstances leading to such a reasonable belief will include information about the offense and the offender the age of the information the nature of the crime at issue the behavior of the arrestee before during and after the arrest ownership and control of the vehicle and results of questioning arrestees and occupants.

The Court did not expound upon why it believed vehicles to be special in this context but Justice Scalia's concurrence in Thornton from which the language was taken reminds us that motor vehicles are a category of effects which give rise to a reduced expectation of privacy and heightened law enforcement needs. Therefore it appears as though officers may not justify a

search of an arrestee's non vehicular lunging area based upon a reasonable belief that evidence of his crime might be found therein.

Rather they will have to articulate reason to believe that the arrestee could access the area at the time of the search. Other Vehicle Search Exceptions Remain Available If an officer cannot justify a search of a vehicle incident to arrest under Gant or is uncertain whether an SIA is warranted other established exceptions to the search warrant requirement remain available to safeguard evidence and protect the safety of officers. 1) If an officer has a reasonable suspicion that a passenger or recent occupant of a vehicle whether arrested or not is dangerous and may gain access to a weapon he may frisk the passenger compartment for weapons This exception is known as a Terry frisk of the vehicle. (2) If the officer has probable cause that the vehicle contains evidence of criminal activity the officer may conduct a thorough search of any area of the vehicle in which the evidence might be found.

This exception is the aforementioned mobile conveyance exception or the Carroll Doctrine. (3) If an officer conducting an arrest reasonably suspects that a dangerous person is hiding in a nearby vehicle he may conduct a protective sweep of the vehicle by looking in places where such a person might be concealed. (4) Consent will always allow an officer to search as long as it is given voluntarily by one with actual or apparent authority to give it and the officer stays within the boundaries of the consent given. 5) Although not permitted for use as a criminal search tool an officer who effects a lawful impound of a vehicle may inventory its contents in accordance with standardized agency policy. If the inventory is performed lawfully any

evidence or contraband identified during the process may be seized and used as evidence in a criminal prosecution and may provide justification for another warrant exception. References ^ " Law professor Tomkovicz writes brief for case in upcoming Supreme Court term". The Press-Citizen. 2008-09-29. [http://www. google. com](http://www.google.com) [http://en. wikipedia. org/wiki/Arizona_v. _Gant](http://en.wikipedia.org/wiki/Arizona_v._Gant)