





## **DPS TRAINING BULLETIN**

**LEGAL BULLETIN NO. 280** June 7, 2004

# SEARCH OF VEHICLE AS INCIDENT TO ARREST APPLIES TO "RECENT OCCUPANT" ARRESTED OUTSIDE OF VEHICLE

Reference: Marcus Thornton United States Supreme Court

v. No. 03-5165

United States May 24, 2004

### FACTS:

A police officer observed Thornton driving a vehicle and acting in a suspicious manner. The officer ran a check on the vehicle's license and learned they had been issued to a different vehicle. Before the officer had an opportunity to pull him over, Thornton drove into a parking lot, parked and got out of the vehicle. The officer approached Thornton and asked him for his driver's license and informed him that his license tags did not match the vehicle he was driving. Thornton was sweating, began rambling and appeared nervous.

The officer asked Thornton if he had any narcotics on him or in his vehicle; Thornton responded "No." The officer then asked him if he could pat him down and Thornton agreed. The officer felt a bulge in Thornton's left front pocket and again asked him if he had any illegal narcotics on him. This time Thornton said he did and reached into his pocket and pulled out two bags. One bag contained three individual bags of marijuana and the other one contained a large amount of crack cocaine. The officer handcuffed Thornton, informed him he was under arrest and placed him in the back seat of the patrol car. The officer then searched Thornton's vehicle and found a .9-millimeter handgun under the front seat.

Thornton was charged with, and convicted of, the Federal crime of (1) possession of a firearm after having been

convicted of a crime punishable by a term of imprisonment exceeding one year [21 U.S.C.  $\S$  841], and (2) possession of a firearm in furtherance of a drug trafficking crime [18 U.S.C.  $\S$  922].

#### ISSUE:

As long as an arrestee is sort of a "recent occupant" of a vehicle, such as Thornton was in this case, may officers search that vehicle incident to arrest?

HELD:

#### REASONING:

- $\underline{1.}$  Belton (see Roger Belton v. NY, Legal Bulletin No. 50) governs even when an officer does not make contact until the person has left the vehicle.
- $\underline{2.}$  In all relevant aspects, the arrest of a suspect who is next to a vehicle presents identical concerns regarding officer safety and the destruction of evidence as does the arrest of one who is inside the vehicle.
- $\underline{3.}$  In some circumstances, it may be more safe and more effective for officers to conceal their presence from a suspect until he has left his vehicle.
- $\underline{4.}$  Once an officer determines there is probable cause to make an arrest, it is reasonable to allow officers to ensure their safety and to preserve evidence by searching the entire passenger compartment.

#### NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section E, "Incident to Arrest," of your Contents and Text. File Legal Bulletin No. 280 numerically under Section R of the manual.