



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 338

April 21, 2009

**SEARCH OF VEHICLE AS INCIDENT TO ARREST IS NOT
PERMISSIBLE UNLESS THE ARRESTEE MIGHT BE ABLE TO
ACCESS EVIDENCE OF THE OFFENSE OF ARREST OR A WEAPON**

Reference: Arizona v. Rodney Joseph Gant U.S. Supreme Court
Opinion No. 07-542
US
April 21, 2009

FACTS:

Police were investigating a residence they believed was being used to sell drugs. While there, they saw GANT drive up. The police knew that GANT's license had been suspended. GANT parked his car at the end of the driveway, about 30 feet from the police. The police officer called to GANT and met him 10 to 12 feet from GANT's car. GANT was immediately arrested and handcuffed. GANT was locked in the backseat of a police car.

Police searched GANT's vehicle and found cocaine in a jacket pocket; he was convicted of drug offenses. GANT argued, successfully before the Arizona Supreme Court, that the police had no right to make a warrantless search of his vehicle and that the evidence should be suppressed. The Arizona Attorney General appealed the Arizona Supreme Court decision to the U.S. Supreme Court.

ISSUE: Can the search of GANT's vehicle be upheld as an incident to arrest?

HELD: No - GANT was arrested for driving with a suspended license - an offense for which police could not reasonably expect to find evidence in GANT's car.

REASONING:

1. Police may search a vehicle incident to a recent occupants' 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 an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies. (emphasis added)

2. A search incident to arrest only includes the arrestee's person and the area "within his immediate control" (reach, lunge or grasp) - construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence. (citing Chimel v. California, 395 US 752).

3. Neither the possibility of access nor the likelihood of discovering offense-related evidence authorized the search in this case. GANT was clearly not within reaching distance of his car at the time of the search.

4. Officers may search a vehicle when genuine safety or evidentiary concerns encountered during the arrest of a vehicle's recent occupant justify a search.

NOTES:

Unless you can justify the warrantless search of a vehicle, after the arrestee has been secured, you should strongly consider applying for a search warrant.

The U.S. Supreme Court in this opinion cited the following cases you should review: New York v. Belton, Legal Bulletin No. 50 (search of vehicle incident to arrest upheld based on probable cause); Thornton v. United States, Legal Bulletin No. 280 (search of vehicle as incident to arrest of recent occupant upheld); Knowles v. Iowa, Legal Bulletin No. 230 (search of vehicle incident to traffic citation impermissible); New York v. Class, Legal Bulletin No. 102 (entry into vehicle to examine vehicle identification number upheld).

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:

File Legal Bulletin No. 338 numerically under Section R of the manual.