



## DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 351  
December 30, 2010

### SEARCH OF VEHICLE AS INCIDENT TO ARREST

**Reference:** Billie Rae Deemer Alaska Court of Appeals  
v. Opinion No. 2289  
State of Alaska P.3d  
December 23, 2010

### **FACTS:**

A State Trooper stopped a vehicle because the female driver failed to signal a turn. When asked to identify herself, the driver lied about her identity. When a second trooper arrived at the scene of the stop, he recognized the driver as Billie Rae Deemer. When her name was run through their computer system, it was learned that there was an outstanding warrant for her arrest for failing to appear in a criminal case. Deemer was arrested, handcuffed and placed in a patrol car. The troopers then searched her car. Deemer's coat was lying on the back seat of the car and when searched, over 33 grams of cocaine, a small electronic scale, several syringes, a couple of small spoons, and tiny plastic bags with cocaine residue in them were seized. The troopers also seized a handgun they found underneath the front seat of her vehicle.

Deemer was charged with, and convicted of: (1) fourth degree misconduct involving a controlled substance (possession of cocaine); (2) second degree weapons misconduct (possession of a firearm in furtherance of a drug felony); (3) third degree weapons misconduct (possession of a concealable firearm by a felon); and (4) giving false information to a police officer.

Deemer argues that all of the evidence should be suppressed. She bases this argument on a recent U.S. Supreme Court case Arizona v. Rodney Joseph Gant (see Bulletin No. 338) where police searched a vehicle (after Gant had gotten out and was some distance away) as incident to arrest for the crime of driving with a suspended license. The U.S. Supreme Court ruled in favor of Gant.

The State of Alaska argues that this case is different and that Deemer's fourth amendment right was not violated.

### **ISSUE:**

Can the search of Deemer's vehicle be justified as a search for evidence?

**HELD:**

Yes. The police have the authority to search a vehicle incident to arrest if they have reasonable belief that evidence relevant to "the crime arrest" (in this case identification) might be found in the vehicle.

**REASONING:**

1. The search must be for evidence of a crime for which the police already have probable cause to make an arrest (here giving false information to a police officer) - not necessarily the particular crime that the police announce as the basis for arrest.
2. The fourth amendment is not violated when the arresting officer is unable to correctly articulate the basis for the arrest or search. Rather, the fourth amendment is violated when the arrest or the search is unreasonable under the facts known to the police.
3. Even though the troopers told Deemer that they were arresting her under the authority of a pre-existing warrant that was issued when she failed to appear on another criminal charge, the troopers at the same time had probable cause to believe that Deemer had just committed the offense of falsely identifying herself to them while she was being detained for investigation of a crime.
4. Alaska law requires motorists to have their driver's license in their possession. Given these circumstances, the troopers had sufficient reason to believe (under Gant) that Deemer's vehicle contained evidence of her crime of falsely identifying herself.
5. In this case, Deemer's coat was lying on the back seat of the car, and it was reasonable to suppose that her driver's license (or other physical evidence of her identity) might be found in the pockets of her coat. Accordingly, the search of her coat for this evidence was lawful.

**NOTES:**

Because the troopers were authorized to search the vehicle for evidence of the crime of furnishing false information to a police officer, the coat would have been a likely place to discover identification. When troopers discovered the drugs and paraphernalia, it became "immediate apparent" to them as to what it was and subject to seizure as plain view.

You should review the following cases: Arizona v. Gant, Legal Bulletin No. 338; McCoy v. State, Legal Bulletin No. 6; Hinkle v. State, Bulletin No. 41 (search of purse in vehicle as incident to arrest); Thornton v. U.S., Legal Bulletin No. 280 (search of "recent occupant of vehicle" as incident to arrest); and Stephens v. State, Legal Bulletin No. 93 (defendant refused to identify himself so police removed and searched wallet looking for identification and found cocaine).

**NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:**

File Legal Bulletin No. 351 numerically under Section R of the manual.