

## FROM THE PROSECUTOR

BY SHERRI BEVAN WALSH, SUMMIT COUNTY PROSECUTOR



# Search Incident to Arrest After *Gant*

In April 2009, the United States Supreme Court decided the case of *Arizona v. Gant*. On April 21, 2009, the law changed for searches, incident to arrest as it relates to traffic stops. Prior to *Gant*, the well established rule of law was that when a police officer made a lawful arrest of the occupant of a vehicle, the officer could “as a contemporaneous incident to that arrest, search the passenger compartment of the automobile.” *New York v. Belton*, 453 U.S. 454 (1981). After *Gant*, this general rule has been modified.

*Gant* changed the law justifying a search incident to arrest from an automatic bright line rule, to a “case by case” basis. As such, when searching a vehicle incident to arrest, it is paramount that law enforcement officers document the reason(s) that made the search “reasonable.” The new rule of law established by *Gant* is: When a police officer makes a lawful custodial arrest of an occupant or recent occupant of a vehicle, the officer may search the passenger compartment if:

the arrestee is within reaching distance *at the time of the search* (or it is reasonable to believe that he may gain access to the vehicle at the time of the search); or

it is reasonable to believe that the vehicle contains evidence of the offense of the arrest.

In *Gant* the U.S. Supreme Court was faced with the issue of whether a police officer could conduct a search of a vehicle incident to arrest after an arrestee has been secured in handcuffs and placed in a locked police vehicle. The Court said, “No.”

In reaching this decision the Court noted that in its prior decisions it held that a search incident to arrest may only include “the arrestee’s person and the area within his immediate control,” interpreting that phrase to mean the area where the individual might gain possession of a weapon or destroy evidence. This limitation, which continues to define the boundaries of the exception, ensures that the scope of a search incident to arrest is consistent with its purposes: protecting arresting officers; and, safeguarding any evidence of the offense that an arrestee might conceal or destroy.

The court reasoned that when a defendant is

handcuffed in a patrol car, there is no possibility that he might reach a weapon or destroy or conceal evidence in his vehicle. The justification for searching his vehicle incident to arrest for officer safety and/or to safeguard against the destruction of evidence no longer existed, and the search was unreasonable.

The following are some tips based on the *Gant* decision:

- (1) **Officer safety is paramount.** Do not leave the arrestee in the vehicle just so you can conduct a search.
- (2) If you have probable cause to believe there is contraband (i.e., dog sniff, plain view, etc.) in an automobile – you may still search.
- (3) *Gant* does not affect inventories of impounded automobiles. If appropriate, impound the vehicle and do an inventory.
- (4) *Gant* case does not affect consensual searches of the automobile.
- (5) You may still search the person who is arrested.
- (6) If there are multiple occupants, and you think one of them might be dangerous – retrieving a weapon (whether or not it is the arrestee) you may search. *Michigan v. Long*, 463 U.S. 1032(1983). The court in *Gant* said, “officers may search a vehicle when genuine safety or evidentiary concerns encountered during the arrest of a vehicle’s recent occupant justify a search.”  
\*\*The key is this — you must be able to articulate your concern. Officer safety is paramount; *If you have a legitimate concern for your safety – search.* If we lose the evidence, we lose it. Please document your reasons in your report for conducting a search.
- (7) You may still search the area within the immediate control of the arrestee – “the area from which he might gain possession of a weapon or destructible evidence.” *Chimel v. California*, 395 U.S. 752 (1969).

The case is available at <http://www.supremecourtus.gov/opinions/08pdf/07-542.pdf>.