On Tuesday, April 21, 2009, the Supreme Court decided the case of Arizona v. Gant dealing with the circumstances permitting the search of a vehicle incident to the arrest of an occupant. Below is the FLETC LGD review of the decision and its practical impact on law enforcement, authored by Jenna Solari, Senior Instructor.

Case Note – Police may search the passenger compartment of a vehicle incident to arrest of an occupant or recent occupant only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest.

Click HERE for the Court's opinions (majority / concurring / dissenting).

FACTS: Gant was arrested for driving on a suspended license. Gant was handcuffed and locked in a patrol car before officers searched the passenger compartment of his car and found a firearm and cocaine. In his motion to suppress the evidence, Gant argued that it was not possible for him to access the vehicle to gain control of a weapon or evidence, and therefore the search of his vehicle was not a reasonable "search incident to arrest."

HELD: Police are authorized to search the passenger compartment of a vehicle incident to arrest of an occupant or recent occupant only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search. Additionally, officers may search the passenger compartment following the arrest of a recent occupant when it is reasonable to believe that evidence relevant to the crime of arrest might be found in the vehicle.

DISCUSSION:

Prior case law: Chimel, Belton, and Thornton. The Supreme Court first established the search incident to arrest ("SIA") exception to the Fourth Amendment's warrant requirement in Chimel v. California, 395 U.S. 752 (1969). Chimel held that police may, incident to arrest, search the arrestee's "lunging area," which is defined as the area from within which the arrestee might gain possession of a weapon or destructible evidence. The purposes of this exception are to protect arresting officers and safeguard evidence of the offense that an arrestee might conceal or destroy. The Court was asked to define the scope of a *vehicle* SIA in New York v. Belton, 453 U.S. 454 (1981). In Belton, the Court held that when an SIA of a vehicle is justified, the entire compartment and any containers therein may be searched. In Thornton v. U.S., 541 U.S. 615 (2004), the Court added that an SIA of a vehicle may be justified even if an occupant has gotten out of the vehicle, closed the door, and walked a short distance away before being arrested. The question remaining, however, was whether the Belton and Thornton rules authorized an SIA of the vehicle regardless of the arrestee's ability to access the passenger compartment following the arrest.

Clarification: arrestee within reaching distance. The majority opinion in Arizona v. Gant has answered that question, holding that prior case law authorizes police to search a vehicle incident to arrest when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search. The Court noted that "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.

An additional justification: offense-related evidence. 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, there will be no reasonable basis to believe that the vehicle contains relevant evidence. 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.

Other vehicle search exceptions remain available. The Court noted that other established exceptions to the search warrant requirement remain available to safeguard evidence and protect the safety of officers. 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.) 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 called the "mobile conveyance exception" or the Carroll Doctrine.) Finally, 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. Although not specifically mentioned by the Court, and not a criminal search tool, an inventory of a vehicle's contents following a lawful impound is another exception to the search warrant requirement. This administrative exception, however, may not be used as a pretext for a criminal search. Consent remains a viable option as well.

The bottom line. To justify a search incident to arrest of a vehicle's passenger compartment, an officer must articulate that either (1) the officer was unable to sufficiently restrain the arrestee during the search, so that it was reasonable to believe the arrestee might have been able to access the vehicle, or (2) there was a reasonable basis to believe that evidence of the crime for which the occupant of the vehicle was arrested might be found in the passenger compartment at the time of the search.

APPLICATION TO FIELD OFFICERS AND AGENTS:

Prepare to articulate! The Court noted that "[w]hen asked at the suppression hearing why the search was conducted, [the officer in this case] responded, 'Because the law says we can do it.'" That answer did not – and will not – meet the government's burden. While searches of vehicles incident to arrest have been considered "automatic" for 28 years, the holding of Gant states that more is required. Officers must be prepared to articulate *facts* establishing one of the permitted justifications.

Don't look for the loophole; it's already closed. Some may suggest the holding in Gant encourages an unsafe practice of leaving arrestees unsecured in a nearby area to justify a search incident to arrest. Justice Scalia, however, in his concurring opinion in Thornton v. U.S., has already anticipated and answered that argument. He wrote, "if an officer leaves a suspect

unrestrained nearby just to manufacture authority to search, one could argue that the search is unreasonable *precisely because* the dangerous conditions justifying it existed only by virtue of the officer's failure to follow sensible procedures."

Unanswered questions:

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." Is this a lower standard than probable cause applicable only to evidence of the crime of arrest?

Can an officer SIA a vehicle when persons other than the already secured arrestee are in the area who might gain access to the vehicle?

Does this ruling, reemphasizing the original Chimel basis for SIA, extend beyond the context of SIA of a vehicle to apply to all SIA of "lunging areas?"