

J



Seattle Police Department

Legal Bulletin



An Accredited Law
Enforcement Agency

Date: May 8, 2009

Bulletin: LB 09-002

Vehicle Search Incident to Arrest- No Automatic Right to Search

Arizona v. Gant, 2009 WL 1045962 (US)

On April 21, 2009, the United States Supreme Court delivered a decision affecting law enforcement's ability to search a vehicle incident to arrest. In Arizona v. Gant, the Court held that police may search the passenger compartment of a vehicle incident to the arrest **only if (1) the arrestee is within reaching distance of the passenger compartment at the time of the search or (2) that the vehicle contains evidence of the offense for which the person was arrested.**

Under the old rule, an officer could search a vehicle incident to an arrest of the driver. **This rule is no longer valid.**

Under the new rule set forth in Gant, the Supreme Court has placed the following limits on when police are authorized to search a vehicle incident to a recent occupant's arrest.

First, officers may not search a vehicle if the arrestee is detained and not able to reach the interior of the vehicle at the time of the search. Thus, if the arrestee is handcuffed, or away from the vehicle, or in the back of a patrol car, a search is **not** permitted. Under rare circumstances, a search might be permitted if the arrestee is within reaching distance of the passenger compartment at the time of the search. **Do not jeopardize officer safety by leaving suspects unsecured near the passenger compartment.** Doing so will likely only result in any evidence obtained being suppressed as the result of a "pretextual" search.

Second, officers may search a vehicle incident to arrest when it is reasonable to believe that evidence **relevant to the crime for which the person was arrested** might be found in the vehicle. The Court explicitly states that **"in many cases, as when a recent occupant is arrested for a traffic [crime], there will be no reasonable basis to believe the vehicle contains relevant evidence."** It would be a very rare situation in which there would be evidence of a traffic crime [e.g. driving while license suspended, reckless driving, traffic warrant] in the vehicle. However, in other situations, the offense for which the person was arrested may supply a basis for searching the interior of the vehicle for evidence of the crime.

A limited search of the vehicle is still allowed in the following circumstances:

- * There is reasonable suspicion that a non-arrestee (driver or passengers) are dangerous and might access the passenger compartment.
- * There is probable cause to believe a vehicle contains evidence of criminal activity
- * Consent to search the vehicle is given by the driver.
- * Inventory search subsequent to arrest pursuant to SPD impound policy.

* Pursuant to a valid search warrant.

Remember, under Washington law, searching locked containers within the vehicle is generally not permitted without a search warrant.

Thus, after consulting with King County Prosecutor's Office, Seattle Police Officers should be aware of the following:

- 1) Officers no longer have the broad authority to automatically conduct a warrantless search of the passenger compartment of a vehicle merely because an arrest has been made.
- 2) Officers may search the passenger compartment of a vehicle incident to the arrest of a vehicle occupant if it is reasonable to believe that the arrestee might access the vehicle at the time of the search and thus pose a risk to officer safety.
- 3) Officers may also search the passenger compartment of a vehicle incident to the arrest of a vehicle occupant if it is reasonable to believe that the vehicle contains evidence of the offense for which the person was arrested.
- 4) Where the arrested person is secured and does not have the ability to access his vehicle, such as when the person is handcuffed and placed in the back of the patrol car, it is not reasonable to believe that the person will have access to the car so as to pose a risk to the officer [e.g. retrieving a weapon] or to have an opportunity to destroy evidence contained in the vehicle.
- 5) Where a person is arrested for a traffic crime or traffic warrant, it would be unreasonable for an officer to believe the vehicle contains evidence of such traffic crimes. Officers should carefully consider and establish whether or not they have a reasonable basis to believe evidence of a traffic crime is contained in the vehicle before conducting a search of the vehicle after an arrest for a traffic crime.
- 6) Where an officer has probable cause to arrest a person for an offense other than a traffic crime a belief that the vehicle contains evidence of such crimes may be more reasonable under the circumstances; however, officers should document the facts that would support the reasonableness of the search of the vehicle without a warrant for the evidence of the offense for which the person was arrested.
- 7) Officers continue to have the ability to conduct an inventory search of an arrested person's vehicle for which they have impounded pursuant to SPD Policies & Procedures Section 6.120.
- 8) Officers may conduct a warrantless search of a vehicle for contraband if they have probable cause to believe that the vehicle contains contraband. The search must be based on probable cause to the extent that objective facts would justify the issuance of a warrant by a magistrate/judge for a search of the vehicle for such contraband.
- 9) Officers may always search a vehicle pursuant to a valid search warrant.
- 10) This change in the law only impacts **searching a vehicle incident to arrest**.

All SPD officers should take note of the change in the law and apply it immediately to all operations. As with any new criminal court decision if there are any questions over the application of this new court case, contact Legal Advisor Renni Bispham 206-684-8649.



Seattle Police Department

Legal Bulletin



Date: June 1, 2009

Bulletin: LB 09-003

Vehicle Search Incident to Arrest-- No Automatic Right to Search--Clarification

Arizona v. Gant, 2009 WL 1045962 (US)

All SPD officers should take note of the change in the law as expressed in the May 8, 2009, LB09-002 Legal Bulletin and the clarification contained in this Legal Bulletin. All operations should immediately reflect this change. As with any new criminal court decision if there are any questions over the application of this new court case, contact Legal Advisor Renni Bispham 206-684-8649.

Probable Cause

LB09-002, in part, noted the following:

A limited search of the vehicle is still allowed where there is probable cause to believe a vehicle contains evidence of criminal activity;

Where an officer has probable cause to arrest a person for an offense other than a traffic crime a belief that the vehicle contains evidence of such crimes may be more reasonable under the circumstances; however, officers should document the facts that would support the reasonableness of the search of the vehicle without a warrant for the evidence of the offense for which the person was arrested; and . . .

Officers may conduct a warrantless search of a vehicle for contraband if they have probable cause to believe that the vehicle contains contraband. The search must be based on probable cause to the extent that objective facts would justify the issuance of a warrant by a magistrate/judge for a search of the vehicle for such contraband.

All of the above statements can be summarized as follows:

Gant expressly allows for a search of a vehicle incident to arrest if there is "reason to believe" that the vehicle contains evidence of the offense of arrest. Since probable cause is at least the same or higher standard than "reason to believe," a search of a vehicle incident to arrest is likely to be upheld where there is probable cause to believe that the vehicle contains evidence of the offense of arrest. However, where **probable cause about a secondary crime** is developed at the scene but after the arrest of the suspect, the best course of action to avoid future suppression of evidence is to **obtain a search warrant** prior to searching the vehicle for evidence of the secondary crime.

It is well-settled law that warrantless searches require articulation as to why a warrant was not necessary. In *State v. Ringer*, 100 Wn.2d 686, recognizing the availability of telephonic search warrants, the court held that the mobile nature of a vehicle alone is not sufficient to justify a warrantless search of that vehicle. As a result, it may be particularly difficult to articulate why it was necessary to do a warrantless search of the vehicle for evidence of a secondary crime after the arrest of the suspect where the courts believe that telephonic warrants are relatively easy to obtain. Thus, the best practice will be to take the time to obtain a search warrant where probable cause is developed as to a secondary crime after the arrest of the suspect.

K



Seattle Police Department Legal Bulletin



An Accredited Law
Enforcement Agency

Date: 2/8/2010

Bulletin: LB 10-002

Search of a Vehicle Incident to Arrest is permissible only when (1) the search is necessary to preserve officer safety or (2) prevent destruction or concealment of evidence of the crime of arrest

On April 21, 2009, the United States Supreme Court ruled that a warrantless search of a vehicle incident to arrest is lawful only if (1) the arrestee is within reaching distance of the passenger compartment at the time of the search or (2) it is reasonable to believe the vehicle contains evidence of the offense of arrest. (*Arizona v. Grant*, ___ U.S. ___ 129 S. Ct. 1710, 173, L. Ed. 2d 485 (2009).) The Department issued two legal bulletins (09-002 & 09-003), and provided a training video explaining the above rules.

State v. Valdez, Slip. Op. 80091-0, Filed December 24, 2009

On December 24, 2009, the Washington Supreme Court issued an opinion in *State v. Valdez*, Slip Op. 80091-0, that has made it almost impossible to lawfully perform a search of a vehicle incident to an arrest under a *Gant* type exception. On May 10, 2005, Valdez was stopped for driving a vehicle with only one working headlight. After Valdez presented identification, a records search revealed an outstanding arrest warrant. Valdez was arrested, handcuffed, and placed in the back seat of the patrol car. A subsequent search found two pounds of methamphetamine and Valdez (along with a passenger) was charged with possession of a controlled substance, with intent to deliver. Both defendants moved to suppress the methamphetamine. The trial court denied their motion. The Court of Appeals, Division Two reversed and sent it back to the trial court with instructions to suppress the methamphetamine evidence.

The Washington Supreme Court affirmed the decision of the Court of Appeals, holding "A warrantless search of an automobile is permissible under the search incident to arrest exception when that search is necessary to preserve officer safety or prevent destruction or concealment of evidence of the crime of the arrest." (*Valdez*, Slip Op. 80091-0, p. 23. Emphasis added.) Further, the Court determined that "Under Article I, section 7, the search was not necessary to remove any weapons the arrestee could use to resist arrest or effect an escape, or to secure any evidence of the crime of arrest that could be concealed or destroyed, [because] [t]he arrestee had no access to his vehicle at the time of the search." (*Valdez*, Slip Op. 80091-0, p. 24.)

Thus, whereas arrested persons are typically handcuffed and placed in the back seat of a patrol car, it will be a rare circumstance, if ever, when an officer will be able to articulate the safety concern that required searching the vehicle of an arrestee who is in the back of the patrol car. Likewise, there will be very few, if any, circumstances where evidence in the vehicle would be

subject to concealment or destruction by the arrestee who is in the back of the patrol car. Thus, the Valdez ruling makes it extremely unlikely that any search under a Gant exception would be upheld and very likely that any evidence found as a result will be suppressed.

What's an Officer to do?

To ensure the best chance of a successful prosecution, officers should obtain a warrant prior to searching the vehicle of an arrested suspect. If that is not possible, officers may conduct a search of the vehicle incident to arrest if the officer believes that he/she will be able to articulate a reasonable belief that the vehicle contained evidence of the crime of the arrest and that there was a danger of concealment or destruction of the evidence; or exigent circumstances (like a hazard of some kind) unrelated to searching for evidence of the crime required the officer to take action.

Finally, please note that Valdez only applies to searches of an automobile incident to arrest, and not searches pursuant to some other exception (e.g. Terry style frisks of persons or cars for officer safety). Officer safety must come first, and officers must do what it takes to remain safe.

As with any new criminal court decision, if there are any questions regarding the application of this case, contact Legal Advisor Renni Bispham 206-684-8649.