

# Chicago Daily Law Bulletin

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## When is it lawful for police to search vehicles?

Whenever the U.S. Supreme Court issues a significant criminal procedure decision, both the prosecution and defense have to make adjustments. Last year in *Arizona v. Gant*, 129 S.Ct. 1710 (2009), the Court gave a major victory to the defense in the area of searches of automobiles. This decision makes it much more difficult for the police to search the passenger compartment of a car as part of a search incident to arrest.

But could the prosecution justify the same search under a different theory? Yes, because under some circumstances it may be possible for the State to support the police actions under the "automobile inventory exception" of the Fourth Amendment. But before doing so, it is important to understand some basic points of search and seizure law.

First, consider the history of the "search incident to arrest" doctrine. It goes back to the Warren Court decision in *Chimel v. California*, 395 U.S. 752 (1968). *Chimel* held that police have the power to do more than simply search the person of the arrestee for evidence. In the interests of officer safety and evidence preservation, the arresting officer is allowed to search in those areas within reach of the arrestee. The Court subsequently explained how "search incident to arrest" could be applied to arrests of automobile occupants in *New York v. Belton*, 453 U.S. 454 (1981). The *Belton* rule was generally understood to be a "bright-line rule" allowing an arresting officer to search the entire passenger compartment of the car — including all closed containers.

Last year's *Gant* decision was a judicial volte-face. The Court held that the broad interpretation lower courts had given *Belton* "untethered the rule from the justifications underlying the *Chimel* exception."

The Court stressed that if an arrestee has been secured, there is no longer a justification for searching the car for officer safety. Therefore, *Gant* allowed a search of the passenger compartment of a car as part of a "search incident to arrest" in only two situations: 1) if the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search; or 2) if it is reasonable to believe evidence relevant to the crime in question might be found in the vehicle.

Clearly, *Gant* constitutes a significant restriction on searches of cars. It did not take long for the Illinois Supreme Court to issue its first reversal based on *Gant*. *People v Bridgewater*, No. 105075, decided Oct. 29, 2009.



### Criminal Procedure

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But prosecutors are beginning to adjust. For example, take a look at a recent decision of the 9th U.S. Circuit Court of Appeals, *U.S. v. Ruckes*, No. 08-30088, decided November 9, 2009. Adrick Ruckes was stopped for speeding outside Tacoma, Wash. A computer check revealed that he was driving on a suspended license. Following his arrest, the police searched the vehicle and uncovered a loaded handgun.

In considering defendant's motion to suppress the gun, the 9th Circuit had no trouble finding that the police search of the vehicle could not be justified under the rule of *Gant*. But the court accepted the prosecution's alternative argument: because Ruckes was taken into custody pursuant to his arrest and his car was impounded, the police would have inevitably discovered the handgun during the police inventory of the car. See *Colorado v. Bertine*, 479 U.S. 367 (1987).

The 9th Circuit began by noting that "inevitable discovery" is an exception to the exclusionary rule and it permits the government to use evidence that would have ultimately been discovered absent a constitutional violation. *Nix v. Williams*, 467 U.S. 431 (1984). The court then noted that the Washington State Patrol is expressly authorized by state law to impound a vehicle when the driver has been arrested for driving with a suspended license. Additionally, police in Washington are authorized to perform a warrantless inventory of the impounded vehicle. Thus, the court held that the handgun was properly admitted at trial.

The 9th Circuit went on to caution prosecutors that the inevitable discovery doctrine would not always save a search that had been invalidated under *Gant*. It stressed that the burden is always on the government to prove by a preponderance of the evidence on a case-by-case basis that the evidence would have actually been discovered legally in its jurisdiction. As the 9th Circuit concluded, "To hold otherwise would create an impermissible loop-hole in the Court's bright-line *Gant* determination."

Recently, the 1st District Appellate Court faced a similar situation — with a different outcome. *People v. Clark*, 914 N.E.2d 734 (2009).

Martell Clark was stopped by Chicago police for not coming to a complete stop in his vehicle. When Clark could not produce a photo ID, the officer placed him in the backseat of the squad car and prepared to take him into custody. A search of the passenger compartment of the car uncovered cocaine. Clark's motion to suppress was denied and he was convicted of unlawful possession of a controlled substance.

On appeal, the State first attempted to justify the search as a proper "search incident to arrest." The 1st District quickly rejected that argument. Citing *Gant*, the court held that because Clark was secured in the back of the squad car, the search was improper.

Alternatively, the State contended that the search could be justified as a proper inventory search.

The court began by noting that three criteria were necessary for a valid warrantless inventory search: (1) the original impoundment of the vehicle must be lawful; (2) the purpose of the inventory search must be to protect the owner's property and the police from claims of lost, stolen, or vandalized property, and to guard the police from danger; and (3) the inventory search

must be conducted in good faith pursuant to reasonable standardized police procedures and not as a pretext for an investigatory stop. *People v. Hundley*, 156 Ill.2d 135, 138 (1993). Although the procedures do not have to be in writing, there must be clearly standardized rules within the police department.

The court emphasized that the threshold question in an inventory search situation is whether the impoundment of the vehicle was authorized; without a proper impoundment there is no justification for an inventory. The court held that the State in this case failed to prove the car was illegally parked, impeding traffic, or threatening public safety or convenience. Additionally, the State failed to show that there was evidence the car needed to be towed to protect it from damage or theft. Moreover, the State could point to no standardized procedure requiring the towing of the car under the facts present in the case at bar. Finally, the court pointed to the failure of the State to produce a written inventory which would have corroborated the contention that the police conducted an inventory rather than a search. For all these reasons, the 1st District held that the trial court should have granted the motion to suppress the cocaine.

The State may be able to get around a *Gant* violation by contending that the evidence would have been inevitably discovered through an inventory search. But as *Clark* shows, the burden is on the State to properly establish that the impoundment of the vehicle was proper and that the actual inventory followed standardized procedures. The defense needs to make sure that the State does not use the inventory exception merely as a pretext to justify an otherwise illegal search.

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