STATE V. GANT: DEPARTING FROM THE BRIGHT-LINE *BELTON* RULE IN AUTOMOBILE SEARCHES INCIDENT TO ARREST

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INTRODUCTION

In *State v. Gant*,[1] the Arizona Supreme Court, in a 3 to 2 decision, held that when an arrestee is handcuffed in the back of a patrol car and under the supervision of an officer at a secure scene, a warrantless search of the arrestee's car cannot be justified as necessary to protect officer safety or to prevent the destruction of evidence. Thus, the search is not subject to the automobile "search incident to arrest" exception to the Fourth Amendment's warrant requirement.[2] The decision is contrary to the holdings of most other state and federal district courts that have addressed the issue.[3]

I. FACTUAL AND PROCEDURAL BACKGROUND

Police officers first encountered Rodney Gant on August 25, 1999, after receiving a tip that drug activity was taking place at a local residence.[4] Two uniformed Tucson police officers went to the suspected residence and knocked on the door.[5] Gant answered the door and told the officers that the owner of the home was gone, but would return later.[6] The officers left the home, ran a records check on Gant, and discovered an outstanding warrant for his arrest for driving with a suspended license.[7] The police officers returned to the same residence later that evening and saw Gant, whose license was still suspended, drive up and park his car in the driveway.[8] An officer summoned Gant as he exited his car and "[w]ithin minutes" he was handcuffed, arrested, and locked in the back of a patrol car.[9] He

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1. 162 P.3d 640 (Ariz. 2007).
2. *Id.* at 644.
3. *Id.* at 645.
4. *Id.* at 641.
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*

remained under officer supervision while the officers searched his car.[10] The officers had already separately handcuffed the other two arrestees on the scene and placed them in separate patrol cars.[11] Nothing in the record indicated that anyone else was present at the scene.[12] At least four officers were at the residence, and as one officer testified, "the scene was secure."[13] After placing Gant in the back of a locked police car, officers searched the passenger compartment of Gant's car and discovered a weapon and a plastic baggie containing cocaine.[14] Gant was subsequently charged with possession of a narcotic for sale and possession of drug paraphernalia.[15] Prior to trial, Gant filed a motion challenging the admissibility of the evidence seized from the car.[16] The superior court denied the motion, holding that the evidence was admissible.[17] Gant was found guilty of both charges and appealed.[18] The court of appeals reversed Gant's convictions, holding that the trial court should have suppressed the evidence.[19] The Arizona Supreme Court denied review, and the State petitioned the U.S. Supreme Court for a writ of certiorari, which the Court granted.[20] The Supreme Court, citing the Arizona Supreme Court's recent opinion in *State v. Dean*,[21] vacated the court of appeals' decision, and remanded the case to that court for reconsideration.[22] In *Dean*, the Arizona Supreme Court had held that when the arrestee is not a recent occupant of the vehicle at the time of arrest, the search is not justified as incident to arrest.[23] Thus, police must obtain a warrant.[24]

The court of appeals remanded the case to the superior court to evaluate whether Gant was a recent occupant of his vehicle at the time of his arrest.[25] The superior court concluded that Gant was a recent occupant and held that the search of his car was "justified as incident to his arrest."[26] Gant again appealed, and, consistent with the previous appeal, the court of appeals reversed the superior court, holding that the search "was not contemporaneous with his arrest."[27] Thus, the warrantless search rationales included in *Chimel v. California*[28] did not apply,

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10. *Id.*
11. *Id.*
12. *See id.* at 643.
13. *Id.*
14. *Id.* at 641.
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.*
20. Arizona v. Gant, 540 U.S. 963 (2003) (per curiam).
21. 76 P.3d 429 (Ariz. 2003).
22. *Gant*, 540 U.S. at 963.
23. *Dean*, 76 P.3d at 437.
24. *Id.*
25. *Gant*, 162 P.3d at 641.
26. *Id.*
27. *Id.*
28. 395 U.S. 752 (1969). In *Chimel*, the Court reasoned that arrestees could just as easily grab a weapon or destroy evidence in the area within their "immediate control" as the arrestees could if the weapon or evidence was on their person. *Id.* at 763. The Court thus

and a warrant was required.[29] The State petitioned for review, which the Arizona Supreme Court granted.[30]

II. THE U.S. SUPREME COURT, THE ARIZONA SUPREME COURT, AND SEARCHES INCIDENT TO ARREST

A. The U.S. Supreme Court

The oft-reiterated language of the U.S. Supreme Court in the Fourth Amendment context has been that a search not conducted pursuant to a search warrant is presumed unreasonable, "subject only to a few specifically established and well-delineated exceptions."[31] A search incident to a lawful arrest has long been recognized as one of the exceptions to the warrant requirement.[32] In *Chimel*, the Court justified the search incident to arrest exception by reasoning that, at the time of arrest, there is a need to protect officer safety and to preserve evidence.[33] In *Chimel*, the Court outlined the permissible scope of a search incident to arrest as including the "arrestee's person and the area 'within his immediate control.'"[34] The Court vaguely defined the area within an arrestee's "immediate control" as "the area from within which he might gain possession of a weapon or destructible evidence."[35]

In *New York v. Belton*, the Court applied the *Chimel* rule to automobile searches incident to arrest.[36] During a routine traffic stop for speeding, the police officer smelled marijuana and ordered the four occupants out of the car.[37] The officer arrested and searched the occupants and then searched the car's passenger compartment, finding a jacket containing cocaine.[38] Acknowledging the desirability of a bright-line rule that establishes the permissible scope of an auto search, the Court held that the area within an arrestee's immediate control encompasses both the passenger compartment of an automobile that the arrestee recently occupied and also containers within the passenger compartment.[39] The Court held that this rule governs even if the contraband is not "inevitably" within the arrestee's reach because it "generally" will be within his reach.[40]

In *Thornton v. United States*, the Court expanded the *Belton* rule to include recent occupants of vehicles.[41] Unlike Belton, Thornton was outside of his

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spelled out the justifications for a warrantless search incident to arrest: preservation of evidence and police safety. *See id.*

29. *See Gant*, 162 P.3d at 641.
30. *Id.* at 641–42.
31. Katz v. United States, 389 U.S. 347, 357 (1967).
32. *See, e.g.*, *Chimel*, 395 U.S. at 755.
33. *Id.* at 762–63.
34. *Id.* at 763 (internal quotation marks omitted).
35. *Id.*
36. 453 U.S. 454 (1981).
37. *Id.* at 455–56.
38. *Id.* at 456.
39. *Id.* at 459–60.
40. *Id.* at 460.
41. 541 U.S. 615, 623–24 (2004).

car at the moment the officer first initiated contact with him; but, similar to Belton, he did not have access to the vehicle during the encounter.[42] The Court only addressed the issue of whether the *Belton* rule applies when an officer initiates contact with a vehicle's occupant after the occupant is no longer in the vehicle.[43] The issue turned on whether Thornton was a recent occupant of the vehicle.[44] The Court held that Thornton was a recent occupant, concluding that "while an arrestee's status as a 'recent occupant' may turn on his temporal or spatial relationship to the car at the time of the arrest and search, it certainly does not turn on whether he was inside or outside the car at the moment that the officer first initiated contact with him."[45]

The Court has not squarely considered whether the fact that a search is performed incident to arrest at a secure scene negates the *Chimel* justifications and, in turn, makes the search unconstitutional. However, many state and appellate courts addressing the issue have held that a search similar to Gant's falls within the *Belton* exception to the warrant requirement.[46] For example, the D.C. Circuit, in *United States v. Mapp*, noted that although the *Chimel* rationales will be stronger in some cases than in others, the Government is not required to justify each search.[47] The court went on to uphold the search of an arrestee's vehicle while the arrestee was handcuffed in the back of a patrol car.[48] Similarly, in *Rainey v. Commonwealth*, the arrestee, after exiting the car, had walked 50 feet from it before police approached him and was also handcuffed during the search of the car.[49] The court in that case upheld the search despite noting that the arrestee was "so far from his vehicle that it was unlikely he could have accessed it."[50] Although there are several cases upholding such searches,[51] some courts, including the Arizona Supreme Court in *Gant*, have held that such searches are unconstitutional.[52]

B. The Arizona Supreme Court

In the landmark case of *State v. Dean*, the Arizona Supreme Court addressed searches incident to arrest in the automobile context.[53] In *Dean*, police attempted to pull over the defendant to arrest him.[54] Instead of cooperating with the police, the defendant parked his Jeep in a friend's driveway, jumped out, and

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42. *Id.* at 618.
43. *Id.* at 619.
44. *Id.* at 623–24.
45. *Id.* at 622–24 (footnote omitted).
46. *See* State v. Gant, 162 P.3d 640, 645 (Ariz. 2007).
47. 476 F.3d 1012, 1018 (D.C. Cir. 2007) (internal citations omitted).
48. *Id.* at 1014-15, 1018-1019.
49. 197 S.W.3d 89, 91, 95 (Ky. 2006).
50 *Id.* at 95.
51. *See, e.g.*, United States v. Hrasky, 453 F.3d 1099, 1100, 1103 (8th Cir. 2006); United States v. Osife, 398 F.3d 1143, 1144, 1146 (9th Cir. 2005); State v. Scott, 200 S.W.3d 41, 42–44 (Mo. Ct. App. 2006) (en banc).
52. *See, e.g.*, Ferrell v. State, 649 So. 2d 831, 833 (Miss. 1995); State v. Greenwald, 858 P.2d 36, 36–37 (Nev. 1993).
53. 76 P.3d 429, 431 (Ariz. 2003).
54. *Id.* at 431.

ran into the garage.[55] The police, after searching for two hours, eventually found Dean in the home's attic.[56] After arresting Dean, officers searched Dean's Jeep without a warrant and found methamphetamine.[57] The trial court, pursuant to Dean's motion, suppressed the evidence, rejecting the State's argument that the search was "simply an administrative inventory of the vehicle contents."[58] The court of appeals reversed, concluding that the search incident to arrest exception applied and that the search was therefore constitutional.[59]

On appeal, the Arizona Supreme Court addressed whether the search incident to arrest exception to the warrant requirement applied in Dean's situation.[60] The court, after citing to the *Chimel* rationales and the bright-line *Belton* rule, struggled with whether Dean was a recent occupant of his vehicle, because the U.S. Supreme Court has never defined when a defendant is a sufficiently recent occupant of a vehicle under *Belton*.[61] The court acknowledged the line of cases holding that a defendant is a recent occupant of a vehicle only if police initiate contact with him when he is still in the vehicle.[62] The court held, however, that the application of *Belton* should not turn on whether police initiated contact with the arrestee when he was still in the vehicle, especially considering that neither *Belton* nor *Chimel* support this rule.[63]

Instead, the court concluded that a Virginia court articulated the correct rule in *Glasco v. Commonwealth* when it "stated that a defendant is 'a recent occupant of a vehicle within the limits of the *Belton* rule' when he is arrested 'in close proximity to the vehicle immediately after the [defendant] exits the automobile.'"[64] The court, adopting the rule in *Glasco*, held that due to the physical distance between Dean and the vehicle when he was arrested and the amount of time that had passed, he did not qualify as a recent occupant.[65] Additionally, neither a concern for preservation of evidence nor for police safety was present.[66] Therefore, the court held that the search of Dean's car was not incident to his arrest and was unconstitutional.[67]

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55. *Id.*
56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.* at 431–32.
60. *Id.* at 432.
61. *See id.* at 433–34.
62. *Id.* at 435.
63. *Id.* at 436.
64. *Id.* at 437 (quoting Glasco v. Commonwealth, 513 S.E.2d 137, 142 (Va. 1999)).
65. *Id.*
66. *Id.*
67. *Id.*

III. THE ARIZONA SUPREME COURT'S OPINIONS AND ANALYSIS

A. The Majority Decision

In *Gant*, Vice Chief Justice Berch, writing for the majority, began by addressing the "threshold question," which was not addressed in *Belton*, of "whether police may conduct a search incident to arrest at all once the scene is secure."[68] Berch concluded that absent the *Chimel* concerns of officer safety and preservation of evidence, the warrantless search of a vehicle is unjustified.[69] The court stressed that Gant, like the other arrestees at the scene, was handcuffed, locked in a patrol car, and subject to police supervision.[70] Furthermore, there were at least four officers present, and "the police had no reason to believe that anyone at the scene could have gained access to Gant's vehicle or that the officers' safety was at risk."[71]

Distinguishing *Belton* from Gant's case, the court noted that in *Belton*, the four occupants of the vehicle remained unsecured at the time of the search, causing a very real risk of destruction of evidence and a threat to the safety of the sole officer on the scene; thus, the *Chimel* justifications for a warrantless search were satisfied.[72] In contrast, in *Gant*, there were at least four officers on the scene, and the police had secured all of the arrestees before they searched Gant's vehicle.[73] Thus, the exigencies present in *Belton* that justified a warrantless search were not present in *Gant*.[74]

The court also rejected the State's argument that *Belton* provides a bright-line rule eliminating the requirement that the *Chimel* justifications be met in automobile search incident to arrest cases.[75] The court reasoned that if officers are not required to assess the exigencies of the situation, "a warrantless search incident to an arrest could be conducted hours after the arrest and at a time when the arrestee had already been transported to the police station."[76] Citing *United States v. Chadwick*, the court noted that the U.S. Supreme Court has refused to apply the search incident to arrest exception to a search performed over an hour after the defendants were arrested and the evidence was in custody.[77] Thus, the court emphasized that the *Chimel* justifications must be met in order to avoid unconstitutional searches similar to the search in *Chadwick*.[78]

The State also argued that *United States v. Robinson*[79] held that in all arrest situations, regardless of individual characteristics, *Chimel* justifications are

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68. State v. Gant, 162 P.3d 640, 643 (Ariz. 2007).
69. *Id.*
70. *Id.*
71. *Id.*
72. *Id.*
73. *Id.*
74. *Id.*
75. *Id.*
76. *Id.*
77. *Id.* (citing United States v. Chadwick, 433 U.S. 1, 15 (1977)).
78. *Id.*
79. 414 U.S. 218 (1973).

presumed to exist, thereby justifying a warrantless search.[80] The court disagreed, instead stating that *Robinson* merely held that police may conduct a search incident to arrest without proving that in a particular case the concerns of police safety and destruction of evidence existed because the concerns are assumed to be present in all arrest situations.[81] The court noted that "[o]nce those concerns are no longer present," the justifications for the warrantless search are not present either and a warrant is required.[82]

The court next distinguished *Thornton* from Gant's case, although the two cases involved similar facts. Like Gant, Thornton was handcuffed and seated in the back of a patrol car at the time police searched his vehicle.[83] The court noted, however, that Thornton did not raise the issue of whether the warrantless search was unjustified because the *Chimel* rationales were not met.[84] Instead, Thornton argued that the search was unlawful because he was not in his car when officers initiated contact with him.[85] Accordingly, the U.S. Supreme Court did not address the issue of whether the search fell outside *Chimel*'s warrant exception.[86] Instead, the Court only addressed whether Thornton was a recent occupant of the vehicle and thus subject to the *Belton* rule.[87]

The majority then rejected the argument presented by the Arizona Law Enforcement Legal Advisors' Association and the Arizona Association of Chiefs of Police, who asserted that the court's holding would result in police officers choosing "not [to] secure arrestees until after they have searched the passenger compartment . . . ."[88] In rejecting this argument, the court reasoned that "police officers will exercise proper judgment" and "will not engage in conduct that creates unnecessary risks to their safety . . . in order to circumvent the Fourth Amendment's warrant requirement."[89] Further, with technological advances, an officer can obtain a warrant within minutes.[90] Thus, the court concluded that "[w]hen, based on the totality of the circumstances, an arrestee is secured and thus presents no reasonable risk to officer safety or the preservation of evidence, a search warrant must be obtained unless some other exception to the warrant requirement applies."[91] Finding that no "other exception to the warrant requirement [justified] the search of Gant's car," the court held that the warrantless search was unlawful.[92]

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80. *Gant*, 162 P.3d at 644.
81. *Id.*
82. *Id.*
83. *Id.*
84. *Id.*
85. *Id.*
86. *Id.*
87. *Id.*
88. *Id.* at 645.
89. *Id.*
90. *Id.*
91. *Id.* at 646.
92. *Id.*

B. The Dissent

Justice Scott Bales, joined by Chief Justice Ruth McGregor, concluded that Gant's case clearly falls within the *Belton* rule; thus, the search did not violate Gant's constitutional rights.[93] Additionally, Justice Bales thought that by concluding that the search of Gant's car was unconstitutional, the majority's analysis conflicted with *Belton* in three ways.[94]

First, Justice Bales argued that *United States v. Robinson*[95] held that searches are permissible regardless of whether "'there was present one of the reasons supporting the' exception to the warrant requirement."[96] Furthermore, he noted that the U.S. Supreme Court applied the holdings of *Robinson* and *Chimel* to its decision in *Belton*.[97] Justice Bales emphasized that the Court in *Belton* upheld a police officer's search of a suspect's jacket "as a valid search incident to arrest even though it occurred after the defendant had been removed from the car and could not reach the jacket."[98] Thus, the validity of the search did "not depend on the presence of the *Chimel* rationales" because the Court did not question the trial court's "finding that the jacket was inaccessible."[99] In fact, Justice Brennan, in his dissent in *Belton*, noted that "'the Court today substantially expands the permissible scope of searches incident to arrest by permitting police officers to search areas and containers the arrestee could not possibly reach at the time of arrest.'"[100] Justice Bales analogized Gant's case to *Belton* because officers were not in danger and evidence was not at risk of being destroyed in either case.[101]

Second, Justice Bales criticized the case-specific determination adopted by the majority's "totality of the circumstances" test and noted that the U.S. Supreme Court created a bright-line rule in *Belton*.[102] "The validity of a *Belton* search . . . clearly does not depend on the presence of the *Chimel* rationales in a particular case."[103] Justice Bales argued that the U.S. Supreme Court in *Belton* justified the search based on circumstances that generally exist upon the arrest of a vehicle's occupant, and the validity of a search is not based upon particularized concerns of officer safety and preservation of evidence in a given case.[104]

Third, Justice Bales criticized the majority's argument that upholding the search of Gant's vehicle would imply that a vehicle could be searched hours after an arrest, noting that a *Belton* search of the passenger compartment must be contemporaneous with the occupant's arrest.[105] Justice Bales concluded by noting

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93. *Id.* at 650 (Bales, J., dissenting).
94. *Id.* at 647.
95. 414 U.S. 218 (1973).
96. *Gant*, 162 P.3d at 647 (quoting *Robinson*, 414 U.S. at 235)).
97. *Id.*
98. *Id.* (citing New York v. Belton, 453 U.S. 454, 462–63 (1981)).
99. *Id.*
100. *Id.* at 647–48 (quoting *Belton*, 453 U.S. at 466 (Brennan, J., dissenting)).
101. *See id.* at 647.
102. *Id.* at 649.
103. *Id.* at 647.
104. *Id.* at 648.
105. *Id.*

that the bright-line rule of *Belton* has been frequently "criticized and probably merits reconsideration."[106] However, because Gant did not develop an argument under the Arizona Constitution and chose to challenge the search on Fourth Amendment grounds under the U.S. Constitution, it is not the Arizona Supreme Court's place to rewrite *Belton*.[107] Justice Bales further noted that, although the court can urge "the [U.S.] Supreme Court to revisit *Belton*," it may not "take it upon [itself] to re-examine *Belton*'s interpretation of the Fourth Amendment."[108]

CONCLUSION

In *State v. Gant*, the Arizona Supreme Court held that the legality of an automobile search incident to arrest must take into account the *Chimel* rationales. This holding is contrary to most other appellate courts' decisions addressing the same issue. In holding that a search of an arrestee's vehicle while the arrestee is handcuffed and seated in the back of a police car at a secure scene is unconstitutional, the court was careful to distinguish *Gant* from United States Supreme Court's decisions in *Thornton* and *Belton*, arguing that the Supreme Court never intended for the *Chimel* justifications to disappear in the automobile context.

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106. *Id.* at 649.
107. *Id.* at 649–50.
108. *Id.* at 650.