

## Search Incident to the Arrest of an Occupant of a Vehicle: Review and Update (Part I)

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**Categories :** [Motor Vehicles](#), [Search and Seizure](#), [Uncategorized](#)

**Tagged as :** [gant](#), [search](#), [Search and Seizure](#), [search incident to arrest](#)

**Date :** August 5, 2013

This blog post is divided in two parts. This is Part I. Part II will be posted tomorrow.

The United States Supreme Court in 2009 issued a ruling in [Arizona v. Gant](#) that significantly restricted an officer's authority, based on the theory of search incident to arrest, to conduct a search of the passenger compartment of a vehicle after arresting an occupant or recent occupant. The Court ruled that officers may search a vehicle incident to arrest only if (1) the arrestee is unsecured and within reaching distance of the passenger compartment when the search is conducted, or (2) it is reasonable to believe that evidence relevant to the crime of arrest might be found in the vehicle. The Court did not define reasonable to believe, but after *Gant* the North Carolina Supreme Court in [State v. Mbacke](#), 365 N.C. 403 (2012), ruled that it means *reasonable suspicion*.

Concerning a search under circumstance (1) above, the Court stated that it will be a rare case in which an officer is unable to fully effectuate an arrest so that an arrestee has a realistic possibility of access to the vehicle. Thus the typical case in which an officer secures the arrestee with handcuffs and places the arrestee in a patrol vehicle will not satisfy this circumstance, as were the facts in *Gant*. Even if a handcuffed arrestee is not placed in a patrol car, it is not likely that the arrestee has realistic access to the vehicle absent unusual circumstances. For example, in [State v. Carter](#), 200 N.C. App. 47 (2009), the court ruled that the defendant was not within the reaching distance or otherwise able to access the passenger compartment when the search began. He had been arrested for an expired registration tag and failure to notify the DMV of a change of address, handcuffed, and was sitting on the curb.

Circumstance (2) will be discussed in Part II tomorrow. The remainder of this post will discuss other relevant issues involving the search of a vehicle after an occupant's arrest and other lawful grounds to search a vehicle.

A search of a vehicle, when based only on the search-incident-to-arrest justification, does not include the trunk. The trunk may be searched when probable cause exists to search the entire vehicle, consent, or when officers conduct an inventory search. Although the United States Supreme Court and North Carolina appellate courts have not decided this issue, other courts have ruled that a search incident to the arrest of an occupant of a station wagon, sports utility vehicle (SUV), or hatchback includes searching all areas of the vehicle that could be reached from within the vehicle.

Although the law is not settled, an arrest of an occupant of a vehicle probably does not authorize officers—under the search-incident-to-arrest justification—automatically (that is, without reasonable suspicion or other justification) to frisk or to search other people in the vehicle simply because an occupant has been arrested. However, courts will consider the dangerousness of the arrestee as a factor in determining whether officers have the authority to frisk the arrestee's companions in the vehicle.

If neither circumstance exists to permit a search of the vehicle under *Gant*, there are other Fourth Amendment justifications, among others, that may authorize a warrantless search of a vehicle:

1. Probable cause to believe that evidence of criminal activity exists in the vehicle—see pages 210-15 of *Arrest, Search, and Investigation in North Carolina* (4th ed. 2011) (hereafter, ASI);

2. Reasonable suspicion that a person, whether or not an arrestee, is dangerous and might access the vehicle to gain immediate control of weapons—commonly known as a “car frisk”—see page 232 of ASI;
3. Impoundment and inventory of a vehicle, which must be conducted under standard operating procedures that are reasonable under the Fourth Amendment—see pages 233-34 of ASI;
4. Consent to search—see pages 199-207 of ASI; or
5. After stopping a vehicle for traffic violations and the driver has left the vehicle, entering the vehicle to remove papers that obscures the vehicle’s Vehicle Identification Number (VIN)—see page 232 of ASI.