

The Court of Appeals Weighs in on Vehicle Searches after *Gant*

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The court of appeals released a batch of opinions yesterday. Several are interesting and important, and there were an unusually large number of opinions in favor of defendants, including some in very serious cases. One of those is [State v. Carter](#), the court's first stab at applying *Arizona v. Gant* -- a case about which I've blogged [here](#) and elsewhere. Recall that the basic holding of *Gant* is that when police arrest an occupant of a motor vehicle, they can only search the passenger compartment of the vehicle incident to the arrest if (1) the arrestee is unsecured and within reaching distance of the vehicle, or (2) there is reason to believe that evidence of the crime of arrest will be found in the vehicle.

The defendant in *Carter* was stopped by an officer who suspected that Carter's temporary tags were expired. It turned out that they were, and that the address on the tags and the address on Carter's license didn't match. For a couple of reasons, including that Carter seemed nervous, the officer decided to arrest him for the tag violation and for failing to notify the DMV of his new address. The officer then searched Carter's vehicle incident to the arrest, and noticed that some papers that had been sitting on the front passenger seat when he first pulled Carter over had been torn into pieces in the interim. The officer seized the papers, which included credit card documents not in Carter's name. The discovery of the papers set off an investigation that resulted in Carter pleading guilty to accessory after the fact to murder, financial identity fraud, and being a habitual felon.

Before the plea, though, Carter had moved to suppress the papers as the result of an illegal search. When his motion was denied, he pled guilty, but he reserved his right to appeal the suppression issue. The first time it heard the case -- before *Gant* -- the court of appeals affirmed, based on *Belton v. New York*, 453 U.S. 454 (1981), and cases under it, which allowed a search of the passenger compartment upon the arrest of any recent occupant of a vehicle. After *Gant* was decided, Carter petitioned the United States Supreme Court for a writ of certiorari. The Court granted the writ, vacated the opinion of the court of appeals, and remanded for further proceedings in light of *Gant*. The court of appeals issued its new opinion yesterday, vacating Carter's conviction, reversing the trial court's ruling on the motion to suppress and remanding the case. (I'm guessing that a pitched battle will ensue about which of the evidence against Carter was the fruit of the stop, and which has an independent source.)

Most of the court's opinion is straightforward: Carter was handcuffed and sitting on a curb at the time of the search, so it wasn't likely that he could reach into the vehicle. And he was "arrested for the traffic offenses of driving with an expired registration tag and failing to notify the [DMV] of a change of address. . . . [I]t would be unreasonable to presume that papers seen on the passenger seat of the car were related to an expired registration or a failure to report a change of address to the Department of Motor Vehicles." Thus, the court concluded, the search could not be justified under either of the two prongs of *Gant*. (As an aside, while the first part of the court's holding is unassailable, the second part seems less certain: isn't it possible that evidence of Carter's address -- such as a bill or a letter -- would be found in the vehicle, especially given that the officer had already seen papers sitting on the passenger seat?)

Perhaps more important than the court's holding on the search is the court's disposition of the matter. Upon finding that the search was unjustified, the court simply reversed the trial court's ruling on the motion to suppress, without engaging in an analysis of whether suppression would serve the purposes of the exclusionary rule. I posted about this issue [here](#), wondering whether courts might decline to suppress evidence seized during vehicle searches conducted incident to arrest before *Gant* and in good faith under the then-settled law allowing such searches. At least one federal circuit

court has recently held the exclusionary rule inapplicable to such cases. *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009). **[Update:** There's at least one federal circuit court case on the other side, too. *United States v. Gonzalez*, ___ F.3d ___, 2009 WL 2581738 (9th Cir. Aug. 24, 2009).] I don't know whether the state didn't raise the issue in *Carter*, or whether the court silently rejected the state's argument. Either way, the result is that one of the big questions about *Gant* remains unanswered.