The Supreme Court Reexamines Search Incident to Lawful Arrest

by RICHARD G. SCHOTT, J.D.

The authority of law enforcement officers to conduct a warrantless search after making a lawful, custodial arrest has been recognized by the U.S. Supreme Court for 95 years.[1] The recognition of the need to conduct searches incident to arrest predates even the Court's acknowledgment of it. In its 1914 *Weeks v. United States* decision, the Supreme Court pointed out that the case before it was "not an assertion of the right on the part of the government *always recognized under English and American law*, to search the person of the accused when legally arrested, to discover and seize the fruits or evidences of crime."[2] In spite of this long history, the search incident to lawful arrest exception to the Fourth Amendment warrant requirement,[3] and the scope of the search thereby authorized, often has been debated in court opinions and law enforcement circles. After having what was considered a bright-line rule for almost 30 years regarding the ability to search the passenger compartment of a vehicle incident to the arrest of a driver, passenger, or recent occupant of that vehicle, the Supreme Court decided on April 21, 2009, that this search is not subject to such a bright-line rule after all.[4] The recent opinion must change the way law enforcement officers view their authority to conduct warrantless searches of vehicles following the arrest of a vehicle's driver, passenger, or recent occupant. As reported in the media the day after the opinion

was rendered, "[t]he Supreme Court yesterday sharply limited the power of police to search a suspect's car after making an arrest, acknowledging that the decision changes a rule that law enforcement has relied on for nearly 30 years."[5]

This article recounts the evolution of the search incident to arrest exception to the warrant requirement; discusses how the bright-line rule for searching vehicles following arrests developed; and analyzes how the recent *Arizona v. Gant*[6] case has changed the legal landscape in this context.

> ***"The recent opinion must change the way law enforcement officers view their authority to conduct warrantless searches of vehicles...."***

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From *Weeks* to *Chimel*: The Warrantless Search Incident to Arrest

While recognizing the right to conduct postarrest warrantless searches as far back as 1914, the Supreme Court's treatment of this search authority has varied over time. In *Marron v. United States*,[7] federal agents had secured a search warrant authorizing the seizure of liquor and certain articles used in its manufacture. When the agents arrived at the search location, they observed that the location was used not only for the manufacture of liquor but also for "retailing and drinking intoxicating liquors."[8] They then arrested the person in charge of the establishment and executed the search warrant. While searching a closet for the items listed in the warrant, they found and seized an incriminating ledger. The ledger admittedly was not covered by the search warrant. However, the Supreme Court ultimately "upheld the seizure of the ledger by holding that since the agents had made a lawful arrest, '[t]hey had a right without a warrant contemporaneously to search the place in order to find and seize the things used to carry on the criminal enterprise.'"[9]

Within only 5 years, the apparent blanket authority to search the place of a lawful arrest had been reined in. In *Go-Bart Importing Co. v. United States*[10] and *United States v. Lefkowitz*,[11] searches following valid arrests, which led to the seizure of evidence, were deemed unconstitutional because, unlike the *Marron* situation, no criminal conduct was witnessed by the arresting agents at the time of the arrests, nor did the agents have a search warrant for the premises they searched. Bluntly stated, the Court in *Lefkowitz* concluded that "[a]n arrest may not be used as a pretext to search for evidence."[12]

The limitations imposed by *Go-Bart* and *Lefkowitz* were relatively short-lived as well. In 1947, the Supreme Court ruled that the search undertaken in *Harris v. United States*[13] was not unconstitutional, sustaining it as "incident to arrest."[14] The search at issue followed the arrest of George Harris, which was based on an arrest warrant for his alleged involvement with cashing and interstate transportation of a forged check. He was arrested in the living room of his four-room apartment. Following the arrest, officers

undertook a thorough search of the entire apartment. Inside a desk drawer, officers found a sealed envelope with the notation "George Harris, personal papers" on it. Altered Selective Service System documents found inside the envelope were used to convict Harris of violating the Selective Training and Service Act of 1940.[15]

The pendulum swung again quickly, this time reining in the warrantless search incident to arrest. In *Trupiano v. United States*,[16] agents raided the site of an illicit distillery, arrested several individuals, and "seized the illicit distillery." Searches of an evidentiary nature were conducted following the arrests. No arrest or search warrants were obtained prior to the raid, arrests, and subsequent searches. After their enforcement operation, the agents involved admitted that there had been adequate opportunity to obtain such warrants beforehand.[17] While finding that the warrantless arrests did not violate the Fourth Amendment, the Supreme Court held otherwise relative to the searches. Finding them a violation of the Fourth Amendment, the Court reasoned that "[i]t is a cardinal rule that, in seizing goods and articles, law enforcement agents must secure and use search warrants whenever reasonably practicable. This rule rests upon the desirability of having magistrates rather than police officers determine when searches and seizures are permissible and what limitations should be placed upon such activities."[18] Addressing precisely these searches incident to arrest, the Court went on to state that "the presence or absence of an arrestee at the exact time and place of a foreseeable and anticipated seizure does not determine the validity of that seizure if it occurs without a warrant. Rather the test is the apparent need for summary seizure, a test which clearly is not satisfied by the facts before us."[19] Finally, and forcefully, the Court held that "[a] search or seizure without a warrant as an incident to a lawful arrest has always been considered to be a strictly limited right. It grows out of the inherent necessities of the situation at the time of the arrest. But there must be something more in the way of necessity than merely a lawful arrest. The mere fact that there is a valid arrest does not ipso facto legalize a search or seizure without a warrant."[20]

> ***Law enforcement officers must... be familiar with the current state of the law regarding searches incident to arrest.***

This forceful pronouncement of the preference for a search warrant was quickly discounted. In 1950, only 2 years after *Trupiano*, the Court decided *United States v. Rabinowitz*[21] and reverted back to the rule laid out in *Harris*. *Rabinowitz* was again an arrest-warrant-only situation. Following the arrest of Rabinowitz at his one-room business office, federal authorities searched the desk, safe, and file cabinets in the office for approximately 90 minutes. The 573 stamps seized during the search were admitted into the trial against Rabinowitz for the possession and sale of postage stamps bearing forged overprints.[22] The *Rabinowitz* Court ruled that the search fell within the principle giving law enforcement authorities "[t]he right 'to search the place where the arrest is made in order to find and seize things connected with the crime as its fruits or as the means by which it was committed.'"[23]

Finally, beginning in 1969, there has been consistency in the law governing the search of the premises where a lawful arrest has been made. *Chimel v. California*[24] continues to stand

for the proposition that following a lawful arrest of an individual, it is lawful to search the arrestee's person and the area within the arrestee's immediate control—that is, "the area from within which he might have obtained either a weapon or something that could have been used as evidence against him."[25] These reasons for allowing the limited search have sometimes been referred to as the "twin rationales of *Chimel*."[26] Ever since *Chimel*, these twin rationales (safety and evidence preservation) have not allowed police to search the entire "place where the arrest is made" as had been set forth in *Rabinowitz*,[27] but, rather, only the area within the arrestee's immediate control. The Supreme Court had not yet analyzed how the area within the arrestee's immediate control would be determined when the individual arrested had been in a vehicle. That issue was presumably resolved 12 years after *Chimel*.

Belton and *Thornton*: The Search Incident to Arrest As Applied to Vehicles

When the Supreme Court rendered its opinion in *New York v. Belton*,[28] it appeared to offer a relatively simple principle to apply to an otherwise potentially problematic and recurring situation faced by law enforcement officers searching a motor vehicle incident to arrest. However, *Arizona v. Gant* now explains that *Belton* did not clarify when the search of the interior of a vehicle may occur following an arrest, but only provided the permissible scope of the search if one is authorized. A recitation of the facts that gave rise to *Belton* is necessary to both frame the decision that came out of *Belton* and distinguish that case from the recently decided *Arizona v. Gant* case.[29]

On April 9, 1978, a New York State trooper was passed by another car traveling at an excessive rate of speed on the New York Thruway. The trooper overtook the speeding car and pulled it over to the side of the road. There were four men in the car, one of whom was Roger Belton. The trooper determined that none of the four men owned the car or were related to its owner. The trooper smelled burnt marijuana in the car and saw on the floor of the car an envelope he associated with marijuana. He, therefore, directed the men to get out of the vehicle and placed them under arrest for the unlawful possession of marijuana. He patted each down and had the four stand in separate areas so they would not be in physical touching distance of each other. The trooper searched each of the arrestees and then searched the passenger compartment of the car. Finding a black leather jacket belonging to Belton on the back seat, he unzipped one of the pockets of the jacket and discovered cocaine. He then placed the jacket in his vehicle

and drove the four to a nearby police station. Belton was indicted for criminal possession of a controlled substance, and he moved to suppress the cocaine as the fruit of an illegal search.[30] The New York Court of Appeals agreed with Belton, holding that "[a] warrantless search of the zippered pockets of an unaccessible jacket may not be upheld as a search incident to a lawful arrest where there is no longer any danger that the arrestee or a confederate might gain access to the article."[31] The U.S. Supreme Court reversed and provided its bright-line guidance on the issue.

Writing for the Court, Justice Potter Stewart began by pointing out that while the *Chimel* principle "that limits a search incident to a lawful custodial arrest may be stated clearly enough, courts have discovered the principle difficult to apply in specific cases."[32] Specifically, Stewart noted that "[w]hile the *Chimel* case established that a search incident to an arrest may not stray beyond the area within the immediate control of the arrestee, courts have found no workable definition of 'the area within the immediate control of the arrestee' when that area arguably includes the interior of an automobile and the arrestee is its recent occupant."[33] Recognizing that "[a] single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront,"[34] the Court provided a seemingly clear pronouncement: "[a]ccordingly, we hold that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile. It follows from this conclusion that the police may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach."[35] Although this pronouncement from the Court seemed straightforward, it left many questions unanswered.

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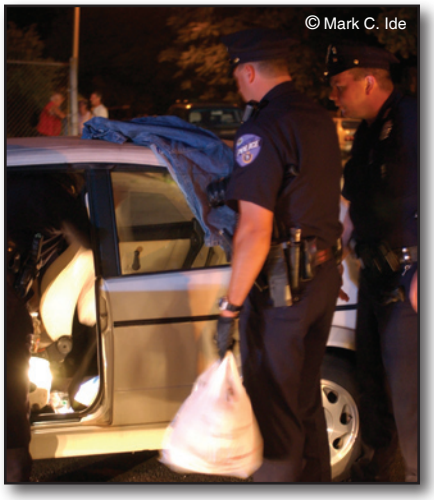
In his dissenting opinion in the case, Justice William Brennan posed many of those questions.

> Would a warrantless search incident to arrest be valid if conducted five minutes after the suspect left his car? Thirty minutes? Three hours? Does it matter whether the suspect is standing in close proximity to the car when the search is conducted? Does it matter whether police formed probable cause to arrest before or after the suspect left his car? And why is the rule announced today necessarily limited to searches of cars? What if a suspect is seen walking out of a house where the police, peering in from outside, had formed probable cause to believe a crime was being committed? Could the police then arrest the suspect and enter the house to conduct a search incident to arrest?[36]

His questions pointed out his primary concern with the Court's ruling—that it "for the first time grants police officers authority to conduct a warrantless 'area' search under

circumstances where there is no chance that the arrestee 'might gain possession of a weapon or destructible evidence.'"[37] He hypothesized that the result in the present case would be the same even if the trooper "had handcuffed Belton and his companions in the patrol car before placing them under arrest, and even if his search had extended to locked luggage or other inaccessible containers located in the back seat of the car."[38] Clearly, the majority's bright-line approach posed potential problems and confusion for law enforcement and judges.

Some of these same concerns were discussed, but not decided, when the Supreme Court returned to this area of the law in *Thornton v. United States*.[39] While *Thornton* can be viewed as a mere extension of the *Belton* bright-line rule—to allow the same passenger compartment search incident to the arrest of a recent occupant of a vehicle, as well as following the arrest of its driver or passenger—its real import may be for its framing of important issues for the Court to decide later. For example, in a footnote in the majority opinion, Chief Justice William Rehnquist pointed out that "[p]etitioner [Thornton] argues that 'we should limit the scope of *Belton to recent occupant[s]* who are within *reaching distance* of the car.'"[40] Instead, the Court extended the *Belton* search to the arrest of any recent occupant regardless of whether he was in reaching distance of the vehicle. The Court declined to address the proximity issue because it was "outside the question on which we granted certiorari."[41] And, in a footnote concluding his opinion, not joined by a majority of the Court,[42] Chief Justice Rehnquist explained that the



Court would not address whether "*Belton* should be limited to cases where it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle,"[43] an argument Justice Scalia supported in his concurring opinion in the case. Rehnquist's reason for not addressing that question was that it had not been argued in the case and, therefore, was not before the Court.

Justice Scalia penned an opinion concurring in the result in *Thornton*, but because he did not subscribe to the bright-line nature of the searches allowed by *Belton*, he did not join the majority. Rather, Scalia reasoned that because it was reasonable for the arresting officer in this case to believe that further evidence of the crime for which the arrest was made would be in the vehicle from which the arrestee had just alighted, the search was justified. In so doing, Scalia made clear that he would "limit *Belton* searches to cases where it is reasonable to believe evidence *relevant to the crime of arrest* might be found in the vehicle."[44]

These issues and the growing disagreement surrounding them would have to be addressed, and finally decided, in a subsequent case. That case would prove to be *Arizona v. Gant*.

Arizona v. Gant: The Bright-line Becomes Less Clear

The notion that the *Belton* case provided a bright-line rule as to when vehicle compartments could be searched incident to arrest has now been eliminated by the *Gant* decision. Because the Court's decision is factually driven, the facts leading up to the decision warrant close scrutiny.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On August 25, 1999, acting on an anonymous tip that the residence at 2524 North Walnut Avenue was being used to sell drugs, Tucson police officers Griffith and Reed knocked on the front door and asked to speak to the owner. Gant answered the door and, after identifying himself, stated that he expected the owner to return later. The officers left the residence and conducted a records check, which revealed that Gant's driver's license had been suspended and there was an outstanding warrant for his arrest for driving with a suspended license.

When the officers returned to the house that evening, they found a man near the back of the house and a woman in a car parked in front of it. After a third officer arrived, they arrested the man for providing a false name and the woman for possessing drug paraphernalia. Both arrestees were handcuffed and secured in separate patrol cars when Gant arrived. The officers recognized his car as it entered the driveway, and Officer Griffith confirmed that Gant was the driver by shining a flashlight into the car as it drove by him. Gant parked at the end of the driveway, got out of his car, and shut the door. Griffith, who was about 30 feet away, called to Gant, and they approached each other, meeting 10-to-12 feet from Gant's car. Griffith immediately arrested Gant and handcuffed him.

Because the other arrestees were secured in the only patrol cars at the scene, Griffith called for backup. When two more officers arrived, they locked Gant in the backseat of their vehicle. After Gant had been handcuffed and placed in the back of a patrol car, two officers searched his car: One of them found a gun, and the other discovered a bag of cocaine in the pocket of a jacket on the backseat.

Gant was charged with two offenses—possession of a narcotic drug for sale and possession of drug paraphernalia (i.e., the plastic bag in which the cocaine was found). He moved to suppress the evidence seized from his car on the ground that the warrantless search violated the Fourth Amendment. Among other things, Gant argued that *Belton* did not authorize the search of his vehicle because he posed no threat to the officers after he was handcuffed in the patrol car and because he was arrested for a traffic offense for which no evidence could be found in the vehicle. When asked at the suppression hearing why the search was conducted, Officer Griffith responded: "Because the law says we can do it."[45]

While that statement made by Officer Griffith appeared accurate at the time it was made, the same comment could not

be made anymore. In an unusually aligned 5-4 decision[46] from the Supreme Court, the Court in *Gant* held that "[p]olice may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies."[47] Based on the facts of this particular case (Gant was handcuffed, in the back of a patrol car, and surrounded by multiple officers after being arrested for driving with a suspended license), the Court found the search of Gant's vehicle to be unreasonable. The Court's holding in *Gant* relied primarily on the twin rationales (safety and evidence preservation) from the *Chimel* case in reaching its conclusion.

While the ruling appears simple enough to apply, the Court's own language throughout the case likely will create confusion and uncertainty for law enforcement officers.[48] In an earlier part of the majority opinion, Justice Stevens wrote "[a]ccordingly, we hold that *Belton* does not authorize a vehicle search incident to a recent occupant's arrest after the arrestee has been secured *and cannot access the interior of the vehicle*."[49] That standard seems to require more than the arrestee merely being "within *reaching distance* of the passenger compartment at the time of the search."[50] Of course, no one should suggest leaving an arrestee unsecured or even within reaching distance of a vehicle so a warrantless search of the vehicle's passenger compartment may be conducted. The Supreme Court even pointed out in a footnote that "[b]ecause officers have many means of ensuring the safe arrest of vehicle occupants, it will be the rare case in which an officer is unable to fully effectuate an arrest so that a real possibility of access to the arrestee's vehicle remains."[51]

> ***The Court's holding in* Gant *relied primarily on the twin rationales (safety and evidence preservation) from the* Chimel *case in reaching its conclusion.***

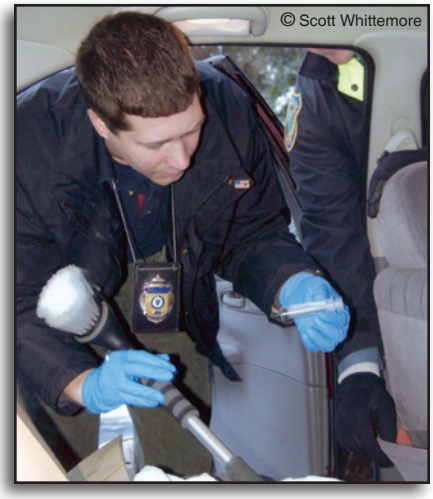
The second justification outlined in *Gant* for conducting a warrantless search of a vehicle's interior compartment contemporaneous with the arrest of one of its occupants is to preserve evidence of the offense of the arrest. This clearly does not allow for searches in every vehicle arrest situation. As was the case in *Gant*, sometimes it is not reasonable to believe any evidence of the offense of the arrest will be within the vehicle.[52] If this second of the twin rationales is to be relied on then, what exactly is required? Ever since 1925, when an officer has probable cause to believe evidence of a crime is in a motor vehicle, then the motor vehicle exception to the warrant requirement would allow a warrantless search wherever that evidence may be.[53] Unclear in *Gant* is whether the Court is referring to a standard different from probable cause when it is willing to allow a search of the passenger compartment if it is "reasonable to believe the vehicle contains evidence of the offense of arrest."[54] Otherwise, this second rationale for the search in *Gant* would be unnecessary in light of the vehicle exception to the warrant requirement.

While *Gant* appears to overturn the *Belton* decision, the Court explains that it does

not. Rather, Justice Stevens claims that because the vehicle search incident to arrest has always been justified by the *Chimel* twin rationales, *Belton* only provided the *scope* of the authorized search if, in fact, a search was warranted at all.[55] Justice Stevens does acknowledge that this is different from the widely accepted belief that the *Belton* opinion did "allow a vehicle search incident to the arrest of a recent occupant even if there [was] no possibility the arrestee could gain access to the vehicle at the time of the search,"[56] attributing the confusion to Justice Brennan's dissent in *Belton*. In fact, Stevens points out that it was a "chorus that ha[d] called for us to revisit *Belton* includ[ing] courts, scholars, and Members of this Court who have questioned that decision's clarity and its fidelity to Fourth Amendment principles"[57] that convinced the Court to grant certiorari to the *Gant* case. As pointed out by Justice Alito in his dissenting opinion, in which he argued that the bright-line rule of *Belton* should remain intact,[58] the Court may not have provided as much clarity to this issue as it hoped.

Conclusion

While the Court has now provided clarification to law enforcement on when vehicle searches are allowed incident to arrest, it did not address an intriguing possibility. Because vehicle searches following arrests are based on *Chimel* principles and because the twin rationales of *Chimel* do not allow the search of vehicles incident to every vehicle arrest, should nonvehicle arrests allow for the search of the area within an arrestee's immediate control



in every situation? If not, should the accessibility to a weapon or evidence be considered in light of the restraints placed on the arrestee? Although he does not think these factors should be considered[59] (and that *Belton* should remain a bright-line rule), Justice Alito's dissent argues that "if we are going to reexamine *Belton*, we should also reexamine the reasoning in *Chimel* on which *Belton* rests."[60] This seemingly logical argument will undoubtedly be made by lawyers in future cases. For now, what *Gant* makes clear is that in spite of numerous lower court decisions and a long-held perception within law enforcement to the contrary, the ability to search a vehicle incident to the arrest of a recent occupant is not a "police entitlement...but rather...an exception justified by the twin rationales of *Chimel*."[61] Law enforcement officers must be aware of this misconception that has lasted for 28 years and be familiar with the current state of the law regarding searches incident to arrest. ✦

Endnotes

[1] *Weeks v. United States*, 232 U.S. 383 (1914).

[2] *Id*. at 392 (emphasis added).

[3] U.S. CONST. Amend. IV provides that "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized." The Supreme Court has concluded that this language dictates that searches conducted without a warrant are per se unreasonable, subject to limited and delineated exceptions. These exceptions include consent searches (*Schneckloth v. Bustamonte*, 412 U.S. 218 (1973)), emergency searches (*Schmerber v. California*, 384 U.S. 757 (1966)), motor vehicle searches (*Carroll v. United States*, 267 U.S. 132 (1925)), inventory searches (*South Dakota v. Opperman*, 428 U.S. 364 (1976)), and

searches incident to arrest (*United States v. Robinson*, 414 U.S. 218 (1973)).

[4] *Arizona v. Gant*, 556 U.S. ___ (2009).

[5] Robert Barnes, "Supreme Court Limits Warrantless Car Searches," *Washington Post*, April 22, 2009, p. A3.

[6] *Supra* note 4.

[7] 275 U.S. 192 (1927).

[8] *Id*. at 194.

[9] *Chimel v. California*, 395 U.S. 752, 756 (1969) (quoting *Marron*, *supra* note 7, at 199).

[10] 282 U.S. 344 (1931).

[11] 285 U.S. 452 (1932).

[12] *Id*. at 467.

[13] 331 U.S. 145 (1947).

[14] *Id*. at 151.

[15] *Id*. at 148-149.

[16] 334 U.S. 699 (1948).

[17] *Id*. at 701-703.

[18] *Id*. at 705 (citations omitted).

[19] *Id*. at 708.

[20] *Id.* (citing *Carroll v. United States*, 267 U.S. 132, 158 (1925).

[21] 339 U.S. 56 (1950).

[22] *Id*. at 57-59.

[23] *Id*. at 61 (quoting *Weeks v. United States*, 232 U.S. 383, 392 (1914)).

[24] 395 U.S. 752 (1969).

[25] *Id*. at 768.

[26] *Thornton v. United States*, 541 U.S. 615, 624 (2004) (O'Connor, J., concurring in part).

[27] *Supra* note 21.

[28] 453 U.S. 454 (1981), *rehearing denied*, 453 U.S. 950 (1981).

[29] *Supra* note 4.

[30] *Supra* note 28, at 455-456.

[31] *People v. Belton*, 50 N.Y.2d 447, 449 (Ct. App. 1980), rev'd., 453 U.S. 454 (1981).

[32] *New York v. Belton*, 453 U.S. at 458.

[33] *Id*. at 460.

[34] *Id*. at 458 (quoting *Dunaway v. New York*, 442 U.S. 200, 213-214 (1979)).

[35] 453 U.S. at 460 (footnotes omitted).

[36] 453 U.S. at 470 (Brennan, J., dissenting).

[37] 453 U.S. at 468 (Brennan, J., dissenting) (quoting *Chimel v. California*, 395 U.S. at 763 (1969).

[38] 453 U.S. at 468 (Brennan, J., dissenting).

[39] 541 U.S. 615 (2004).

[40] *Id*. at 622, fn. 2.

[41] *Id*.

[42] Justice O'Connor joined with Chief Justice Rehnquist and Justices Kennedy, Breyer, and Thomas in all of the majority opinion except for fn. 4.

[43] *Supra* note 39, at 624, fn. 4.

[44] 541 U.S. at 632 (Scalia, J., concurring) (emphasis added).

[45] *Arizona v. Gant*, 556 U.S. ___ at ___ (2009), No. 07-542, slip op. at 2-3.

> ***"While recognizing the right to conduct postarrest warrantless searches as far back as 1914, the Supreme Court's treatment of this search authority has varied over time."***

[46] Justice Stevens delivered the opinion of the Court, joined by Justices Scalia, Souter, Thomas, and Ginsburg. Justice Scalia filed his own concurring opinion; while Justice Breyer filed a dissenting opinion. Justice Alito filed a dissenting opinion, which was joined by Chief Justice Roberts and Justice Kennedy and by Justice Breyer, except as to Part II-E.

[47] *Supra* note 45, at ___, No. 07-542, slip op. at 18.

[48] In his dissenting opinion in *Gant*, Justice Alito points out that "the second part of the new rule...is virtually certain to confuse law enforcement officers and judges for some time to come." No. 07-542, slip op. at 2 (Alito, J., dissenting).

[49] Id. at ___ (emphasis added), No. 07-542, slip op. at 1-2.

[50] *Supra* note 47, at ___ (emphasis added), No. 07-542, slip op. at 18.

[51] *Supra* note 45, at ___, No. 07-542, slip op. at 10, fn. 4.

[52] See, e.g., *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001), where a custodial arrest of a driver for failure to wear seatbelt, failure to seatbelt children, driving without a license, and failure to provide proof of insurance was deemed a reasonable arrest.

[53] *Carroll v. United States*, 267 U.S. 132 (1925).

[54] *Supra* note 47, at ___, No. 07-542, slip op. at 18.

[55] *Supra* note 45, at ___, No. 07-542, slip op. at 9.

[56] *Id*. at ___, No. 07-542, slip op. at 8.

[57] *Id*. at ___, No. 07-542, slip op. at 4.

[58] *Supra* note 45, at ___ (Alito, J., dissenting).

[59] In his dissenting opinion, Justice Alito points out that "[h]andcuffs were in use in 1969. The ability of arresting officers to secure arrestees before conducting a search—and their incentive to do so—are facts that can hardly have escaped the Court's attention" in *Chimel*, and that the *Chimel* Court intended that its new rule apply in cases in which the arrestee is handcuffed before the search is conducted. No. 07-542, slip op. at 9 (Alito, J., dissenting).

[60] *Supra* note 45, at ___, No. 07-542, slip op. at 10 (Alito, J., dissenting).

[61] *Id*. at ___, No. 07-542, slip op. at 9 (quoting *Thornton v. United States*), 541 U.S. 615, 624 (2004) (O'Connor, J., concurring in part).

Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.