

G.O. 602-01

60201

1. REQUEST FOR <input type="checkbox"/> LOCAL LOOKOUT <input type="checkbox"/> INTERSTATE TT <input type="checkbox"/> ADMINISTRATIVE TT <input type="checkbox"/> DETAIL (See Reverse)	2. TYPE <input type="checkbox"/> ORIGINAL <input type="checkbox"/> EXPEDITE <input type="checkbox"/> ADDITIONAL <input type="checkbox"/> CANCEL <input type="checkbox"/> CORRECTION <input type="checkbox"/> REPEAT <input type="checkbox"/> REPLY	3. COMPLAINT NUMBER	6. DATE OF REQUEST April 24, 2009
		4. UNIT NUMBER 727-4129	7. REQUESTING ELEMENT OGC
		5. <input type="checkbox"/> NOT FOR THE PRESS	8. <input type="checkbox"/> FLASH TT REQUESTED

9. TO
THE FORCE TO BE READ AT ALL ROLL CALLS

10. NAME OF WANTED PERSON	11. WANTED BY	12. CHARGE
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13. COMPLAINANT-S NAME	14. COMPLAINANT-S ADDRESS
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15. DESCRIPTION OF WANTED PERSON OR MESSAGE

Supreme Court Decision re: Search Incident to Arrest

The purpose of this teletype is to inform members about the Supreme Court's recent decision in the case of *Arizona v. Gant*, 556 U.S. ___ (2009). The Court held that police may search the passenger compartment incident to an arrest of a recent occupant only if it is reasonable to believe the arrestee might access the vehicle during the search or that the vehicle contains evidence of the offense for which the person was arrested. The decision involved an arrest for driving on a suspended license and the subsequent search of the vehicle while the prisoner was handcuffed and detained in a nearby police vehicle. The search yielded a gun and drugs. The driver was later charged with possession of a narcotic drug for sale and drug paraphernalia.

The Court looked to the Fourth Amendment principle that a warrantless search is *per se* unreasonable except in very limited circumstances. One such exception includes a search incident to a lawful arrest of the person and the area within his immediate control (meaning the area where the arrestee may gain control of a weapon or destructible evidence). This exception is related to the interest of officer safety and protection of evidence. *See Chimel v. California*, 395 U.S. 752 (1969).

The Court rejected its earlier broader interpretation of the search incident to arrest made in a vehicle and held that its decision in *New York v. Belton*, 453 U.S. 454 (1981), "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 (emphasis added)." *Slip Opin. at 1.*

As a result, members are to cease conducting vehicle searches incident to arrest unless the arrestee is unsecured and has access to the interior of the vehicle (i.e., reaching distance of the passenger compartment), or the vehicle contains evidence of the offense for which the person was arrested. Members are reminded that merely allowing the prisoner to remain in close proximity to the vehicle will not support a warrantless search. Members are entitled to conduct a safety frisk of the person and passenger compartment when conducting a *Terry* stop only if reasonable suspicion existed that an occupant of the car was armed with a weapon or that there was a weapon in the car.

Any questions about the application of this decision to situations you may confront should be addressed to your supervisors.

SENDER-BADGE-ORG. ELM. Terrence D. Ryan General Counsel	AUTHORIZED BY-BADGE-ORG. ELM. Alfred Durham Assistant Chief of Police	BUREAU HEAD APPROVAL Cathy L. Lanier Chief of Police
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COMMUNICATIONS DIVISION USE ONLY

REMARKS	DATE AND TIME
	FILE
	TELETYPE NUMBER 7104-100-09

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