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CASE NOTE

CONSTITUTIONAL LAW—Faded Lines: Another Attempt to Delineate Reasonableness in Automobile Searches Incident to Arrest; Arizona v. Gant, 129 S. Ct. 1710 (2009)

Devon M. Stiles*

INTRODUCTION

On August 25, 1999, Tucson police dispatched two officers to investigate a residence implicated by an anonymous tip as the site of a drug-dealing operation.1 Upon answering the door, the respondent Rodney Gant identified himself and informed the officers he expected the owner of the household to return later.2 The officers left and checked Gant’s background, discovering he had a suspended driver’s license.3 The officers returned to the residence later and arrested two individuals: one for providing a false name and the other for possession of drug paraphernalia.4

Shortly thereafter, another man arrived in a car; the officers recognized the car as belonging to Gant.5 After Gant exited his vehicle, the police arrested him for driving on a suspended license.6 After handcuffing Gant, the police placed him in the backseat of a patrol car and called for additional officers to assist at the crime scene.7 After the additional officers arrived on the scene, the police searched Gant’s car.8 The officers found Gant’s jacket on the backseat of his car, searched the pockets of the jacket, found a bag of cocaine, and charged him with possession of a narcotic drug for sale and possession of drug paraphernalia.9 After Gant’s failed attempt to suppress the evidence at trial, his subsequent conviction and numerous appeals, the United States Supreme Court granted Gant’s petition for certiorari.10

* Candidate for J.D., University of Wyoming College of Law, 2011. I would like to thank Lisa Rich, Kevin Marshall, Allen Johnson and the members of the Wyoming Law Review Board for their tremendous assistance throughout this process. I would also like to thank my wife Megan for her enduring love, patience, and support.

2 Id. at 1715.
3 Id.
4 Id.
5 Id.
6 Id.
7 Id.
8 Id.
9 Id.
10 Id.
In a 5 to 4 decision, the *Gant* majority issued two holdings reinterpreting the existing federal cases guiding police practices in automobile searches made incident to arrest, thus creating a new bright-line rule. The first holding served to reinterpret and limit the boundaries set by the seminal case *New York v. Belton*. The second holding adopted Justice Scalia’s concurring opinion in *Thornton v. United States* and established a new standard of suspicion to initiate automobile searches incident to arrest.

The two *Gant* holdings represent a radical departure from the past two decades of Fourth Amendment automobile jurisprudence. This case note critiques the two *Gant* holdings as lacking clarity and providing scant guidance to law enforcement. The background section of this note details the history of warrantless searches incident to arrest, focusing on three seminal United States Supreme Court cases involving automobile searches incident to arrest: *Chimel v. California*, *New York v. Belton*, and *Thornton v. United States*. Further, this note outlines the automobile exception to the Fourth Amendment warrant requirement, established in *United States v. Carroll*, *United States v. Ross*, *California v. Acevedo*, and *Wyoming v. Houghton*. Finally, after critiquing the two holdings in *Gant*, this note advocates for a return to the probable cause standard and the adoption of the automobile exception as an alternative to *Gant’s* unclear bright-line rule.

**BACKGROUND**

The Fourth Amendment to the United States Constitution protects individuals from “unreasonable searches and seizures” and invokes probable cause
as the baseline standard for determining reasonableness. Whether a search is reasonable, however, requires a detailed factual analysis which balances a suspect’s privacy interests with the government’s need to conduct a search.

The United States Constitution proscribes warrantless searches as per se unreasonable, subject to certain limited exceptions. Searches conducted by police incident to the arrest of a suspect are reasonable under the Fourth Amendment if the searches adhere to a series of bright-line rules. The United States Supreme Court originally created these rules to govern all warrantless searches occurring incident to the arrest of a suspect, then later established a separate set of rules governing searches incident to arrest if the searches specifically targeted the vehicles of suspects.

**Searches Incident to Arrest**

Nearly a century of jurisprudence defines the boundaries of reasonableness in searches incident to arrest. In the first half of the twentieth century, the Supreme Court defined reasonableness on a case-by-case basis, with no specific rule or test.
providing guidance.25 This trend ceased in 1950 with United States v. Rabinowitz, which allowed police to search the entire premises surrounding a suspect if the search commenced incident to the suspect’s arrest.26 In 1969, the Court overruled Rabinowitz and established the first bright-line rule governing searches incident to arrest in Chimel v. California.27 Under Chimel, a search is unreasonable if the police search outside the area in the suspect’s “immediate control,” defined as the area where the suspect could obtain a weapon or destroy evidence.28 Whether Chimel permitted police to search the interior of a suspect’s vehicle incident to an arrest remained unsettled.29

The Problem of Vehicles

The Court considered the challenge of defining reasonableness in warrantless automobile searches incident to arrest in New York v. Belton.30 In Belton, an officer stopped the defendant’s vehicle for a speeding violation.31 After approaching

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26 3 LAFAVE, supra note 22, § 6.3 n.25 (citing Smith v. United States, 254 F.2d 751, 755 (1958)). In Smith, police officers searched for drugs upstairs shortly after arresting the defendant downstairs. Smith, 254 F.2d at 753. Since the police arrested the defendant downstairs, he could never have gained access to the drugs upstairs or hindered the evidence-gathering process. Id. However, in response to the defendant’s evidentiary challenge, the court quoted the majority in United States v. Rabinowitz, 339 U.S. 56, 65 (1950):

[W]e cannot agree that [the requirement of procuring a warrant prior to a search] should be crystallized into a sine qua non to the reasonableness of a search. It is fallacious to judge events retrospectively and thus to determine, considering the time element alone, that there was time to procure a search warrant.

Smith, 254 F.2d at 755. The court in Smith interpreted this as a rule preventing judges from retrospectively judging the reasonableness of a search incident to arrest. Id. at 753–55.

27 See 3 LAFAVE, supra note 22, § 6.3 (summarizing Chimel v. California, 395 U.S. 752 (1969)).

28 Chimel, 395 U.S. at 768. The Chimel opinion addressed the increasing expansion of the range in which the police could conduct a reasonable search incident to the arrest of a suspect. Id. The majority argued once the boundary of reasonableness expands outside the immediate control of the suspect, the distinction essentially becomes an artifice attempting to maintain some semblance of the Rabinowitz rationale. Id. at 759, 762–66. The Court could thus think of no rational reason for police to search beyond an area where the suspect presented a danger to evidence or officers. Id. at 766. After police secured a suspect, they faced little risk in taking the time to obtain a warrant to search the suspect’s premises since the suspect no longer presented a threat. Id. at 754–56, 763–68.

29 See 3 LAFAVE, supra note 22, § 7.1(a) (describing how lower courts would often overlook the immediate control test in Chimel if the disputed search involved a vehicle).


31 Belton, 453 U.S. at 455.
the car and requesting the driver's license and registration, the officer smelled burnt marijuana emanating from within the car and saw a bag on the floor of the car labeled “Supergold,” which the officer associated with marijuana.\(^32\) These circumstances provided the officer with probable cause to believe the occupants of the vehicle illegally possessed marijuana.\(^33\) The officer subsequently arrested the defendant and the other individuals in the defendant’s car for possession of marijuana.\(^34\) The officer searched the vehicle after detaining the suspects and discovered the defendant’s jacket in the back seat of the car.\(^35\) The officer discovered cocaine in the jacket pocket.\(^36\)

The defendant challenged the constitutionality of the search of his jacket, alleging it commenced without probable cause and thus violated the Fourth Amendment.\(^37\) In its holding, the United States Supreme Court found the search reasonable, extending the Chimel immediate control rule to include passenger compartments into which a “recent occupant” of the vehicle had access.\(^38\) Belton thus expanded the reasonableness of a search incident to arrest to include the entire car rather than merely the area where a suspect could destroy evidence or harm officers.\(^39\)

In Thornton v. United States, the Court expanded the definition of “recent occupant” to include any individuals, including passengers, who exited a vehicle prior to detainment by officers.\(^40\) The defendant in Thornton cautiously passed an officer while driving a Lincoln Town Car.\(^41\) The officer subsequently checked the car’s tags and found they were registered to a different make and model than the defendant’s car.\(^42\) The officer pursued, but the defendant parked the car and

\(^{32}\) Id. at 455–56.
\(^{33}\) Id. at 456.
\(^{34}\) Id.
\(^{35}\) Id.
\(^{36}\) Id.
\(^{37}\) Id.
\(^{38}\) Id. at 460 (“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.”).
\(^{41}\) Thornton, 541 U.S. at 617–18.
\(^{42}\) Id. at 618.
exited the vehicle before the officer stopped him.43 The defendant appeared nervous and incoherent when the officer confronted him in the parking lot.44 Upon consenting to a pat down search, which revealed a bulge in his pants, he admitted to possessing narcotics.45 He then revealed two containers to the officer: one containing three bags of marijuana, and another containing a large amount of crack cocaine.46 The officer handcuffed the defendant, placed him in the patrol car, and initiated a search of the defendant’s car.47 During the search, the officer discovered a handgun.48 The jury convicted Thornton of several crimes, including possession of a firearm after having been previously convicted of a felony.49

In its ruling, the Thornton Court expanded the scope of reasonableness in a search incident to arrest beyond the boundaries defined in Belton.50 Similar to Belton, this expansion allowed officers to search anywhere in a vehicle the suspect could have hidden evidence or weapons.51 However, the rule in Belton only addressed searches that commenced incident to the arrest and forcible removal of the defendant from the vehicle.52 In contrast, the Thornton Court expressly rejected an analysis of whether the officer made the arrest outside the vehicle or forcibly removed the suspect from the vehicle prior to initiating the search.53 This rendered irrelevant the temporal or spatial proximity of the suspect to the vehicle at the time of the search, allowing police to expand the scope of a search incident to arrest to include the suspect’s entire vehicle.54

Justice Scalia wrote a concurring opinion in Thornton, joined by Justice Ginsburg.55 Justice Scalia believed the Belton rule did not require an inquiry into the Chimel dual interests of officer safety and the preservation of evidence.56

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43 Id.
44 Id.
45 Id.
46 Id.
47 Id.
48 Id.
49 Id.
50 Id. at 620–21.
51 See Carson, supra note 39, at 1069–70 (describing how Belton expands the search incident to arrest exception beyond the area of immediate control).
52 Belton, 453 U.S. at 456.
53 Thornton, 541 U.S. at 620–21 (“There is simply no basis to conclude that the span of the area generally within the arrestee’s immediate control is determined by whether the arrestee exited the vehicle at the officer’s direction, or whether the officer initiated contact with him while he remained in the car.”). 54 Id.
55 Id. at 625–32 (Scalia, J., concurring).
56 Id. at 626–28.
Instead, he reasoned the Belton rule allowed the type of broad, sweeping searches authorized by Rabinowitz. He supported both the Rabinowitz and Chimel interpretations of the search incident to arrest exception as constitutionally valid, but found the Thornton majority’s attempts to tether Belton to Chimel functionally disingenuous, since he found no examples of a defendant who successfully escaped and gained access to a vehicle after detainment. He thus argued a reasonable search incident to arrest commences when officers have reason to believe evidence of the crime of arrest exists in the vehicle at the time of the search.

The Automobile Exception

The Fourth Amendment to the United States Constitution mentions probable cause as a standard of suspicion limiting when courts may issue warrants. Over time, courts have interpreted the language of the Fourth Amendment to render probable cause the baseline standard of suspicion required for reasonableness in warrantless searches. Belton–Thornton addressed the scope of reasonableness in a search incident to a suspect’s arrest when the searches commenced without probable cause or a warrant. When officers—absent a warrant—have probable cause to believe evidence of a crime exists in a suspect’s vehicle, a different set of case law applies, allowing officers to search the entire vehicle and the contents of passenger belongings for evidence of wrongdoing.

The United States Supreme Court in the seminal case United States v. Carroll first established the “automobile exception” to the Fourth Amendment warrant requirement allowing warrantless searches of a vehicle when law enforcement

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57 Id. at 629; see supra note 26 and accompanying text (discussing Rabinowitz).
58 Thornton, 541 U.S. at 625–26 (Scalia, J., concurring).
59 Id. at 630.
60 U.S. CONST. amend. IV. The Fourth Amendment provides:
   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.
   Id.
63 See infra notes 64–73 and accompanying text (discussing the cases underpinning the automobile exception).
officers possess probable cause to search sufficient to obtain a warrant. In United States v. Ross, the Court expanded the automobile exception to allow searches of the passenger compartments of vehicles. The Court affirmed this expansion in California v. Acevedo, holding that a search of a closed container in a vehicle is reasonable when law enforcement officers have probable cause to believe it contains evidence or contraband.

The Court fully expanded the automobile exception in Wyoming v. Houghton. In Houghton, an officer pulled over a vehicle with a faulty brake light and noticed a hypodermic needle in the driver’s front pocket. After leaving the vehicle at the demand of the officer, the driver admitted he used the needle to take drugs. The officer then ordered the two passengers, including Houghton, out of the vehicle. The officer proceeded to search the vehicle and discovered Houghton’s purse, in which he discovered a brown pouch containing methamphetamine. The officer also noticed hypodermic needle marks on Houghton’s arms and subsequently arrested her for felony possession of methamphetamine. The Court held that when an officer has probable cause to search a suspect’s car for contraband, the automobile exception allows the officer to reasonably search any passenger’s belongings found in the car at the time of the search.

Wyoming’s Alternative Approach

When confronted with the dilemma of determining the reasonableness of automobile searches incident to arrest, several states—including Wyoming—have

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64 United States v. Carroll, 267 U.S. 132, 147, 155–57, 162 (1924) (holding when police possess probable cause to believe evidence of a crime exists in a vehicle, sufficient to procure a warrant, the police may search the vehicle without first obtaining a warrant); see also Alex Chan, No, You May Not Search My Car! Extending Georgia v. Randolph to Vehicle Searches, 82 WASH. L. REV. 377, 384–88 (2007) (outlining the automobile exception to the Fourth Amendment warrant requirement).

65 Ross, 456 U.S. at 825 (holding the automobile exception allows police to search compartments in a vehicle, including the trunk, if the officers have probable cause to believe evidence or contraband is hidden somewhere in the vehicle, since a warrant issued by a court would allow a full search of passenger compartments).


67 Houghton, 526 U.S. at 298.

68 Id.

69 Id.

70 Id.

71 Id.

72 Id.

73 Id. at 307.
chosen to adopt approaches different from the Belton–Thornton rule. Article 1, § 4 of the Wyoming Constitution contains a provision similar to the Fourth Amendment which protects citizens from unreasonable searches and seizures. In Wyoming, defendants often challenge the reasonableness of automobile searches incident to arrest under both Article 1, § 4 of the Wyoming Constitution and the Fourth Amendment to the United States Constitution. Challenges made under the Wyoming Constitution adhere to a factor-based “reasonable under all the circumstances” approach created in a series of Wyoming Supreme Court cases. However, any challenges made under the Fourth Amendment must now adhere to Gant rather than Belton.

**Principal Case**

After leaving the alleged drug house, police officers discovered Gant’s suspended license after a check of police records. When they returned later, Gant arrived in his car, after which the police arrested him for driving on a suspended license. After handcuffing and securing him in a police car, the officers searched his vehicle incident to his arrest. The officers found Gant’s jacket on the back seat and discovered cocaine in the jacket pocket. The state charged Gant

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74 Gant, 129 S. Ct. at 1718 n.8 (referencing all relevant case law from the states which decided to repudiate Belton–Thornton in favor of alternative approaches).

75 WYO. CONST. art. 1, § 4. The Wyoming Constitution provides:

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 warrant shall issue but upon probable cause, supported by affidavit, particularly describing the place to be searched or the person or thing to be seized.

Id.


78 See infra notes 87–93 and accompanying text (outlining the separate holdings of Gant).


80 Id.

81 Id.

82 Id.
with two offenses: possession of a narcotic drug for sale and possession of drug paraphernalia. Gant moved to suppress the evidence. The trial judge denied Gant’s motion, and the jury convicted Gant of both offenses. After a lengthy set of appeals, the United States Supreme Court granted certiorari.

Majority Opinion

Justice Stevens wrote the majority opinion, joined by Justices Ginsburg, Souter, Thomas, and Scalia. Justice Scalia issued a separate concurring opinion critiquing the majority’s reasoning, but joined the majority to avoid creating a plurality opinion. In its first holding, the majority rejected broad State readings of Belton as unconstitutionally expanding the search incident to arrest exception to establish an automatic authorization of all searches of a suspect’s vehicle. Accordingly, the Court retethered Belton to the Chimel doctrine, rendering a warrantless automobile search incident to arrest reasonable when the suspect is

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84 See Defendant’s Motion to Suppress at 1, State v. Gant, No. CR-20000042 (Ariz. Super. Ct. Apr. 26, 2000), 2000 WL 34566317 (arguing the police conducted an unreasonable search incident to arrest pursuant to Chimel since police had secured Gant in a police car prior to commencing the search); Response to Defendant’s Motion to Suppress at 1, State v. Gant, No. CR-20000042 (Ariz. Super. Ct. May 18, 2000), 2000 WL 34566316 (contending Belton authorized the search automatically since it commenced incident to Gant’s arrest).
86 See, e.g., State v. Gant (Gant I), 43 P.3d 188, 194 (Ariz. Ct. App. 2002) (determining police unreasonably searched Gant’s vehicle because he presented no threat to either the police or to the evidence in the vehicle, and the police should thus have obtained a warrant prior to initiating the search); State v. Gant (Gant II), 162 P.3d 640, 642 (Ariz. 2007) (holding the police search unreasonable under the Fourth Amendment).
87 Id. at 1724–25 (Scalia, J., concurring). Although Justice Scalia did not agree with the majority’s reasoning, he chose to join with the majority opinion to prevent the confusion of a 4 to 1 to 4 split decision:

It seems to me unacceptable for the Court to come forth with a 4-to-1-to-4 opinion that leaves the governing rule uncertain. I am therefore confronted with the choice of either leaving the current understanding of Belton and Thornton in effect, or acceding to what seems to me the artificial narrowing of those cases adopted by Justice Stevens. The latter, as I have said, does not provide the degree of certainty I think desirable in this field; but the former opens the field to what I think are plainly unconstitutional searches—which is the greater evil. I therefore join the opinion of the Court.

Id. at 1725; see also infra notes 94–97 and accompanying text (discussing Justice Scalia’s concurring opinion in Gant).
“unsecured” and could gain access to the passenger compartment of the vehicle and destroy evidence or brandish a weapon.90

In its second holding, the majority extended Gant beyond the Chimel doctrine by adopting Justice Scalia’s concurrence in Thornton.91 In addition to the dual interests of protecting officers and the integrity of evidence articulated in Chimel, a reasonable search incident to arrest includes a warrantless search commenced when it is “reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.”92 The Court thus held the search of Gant’s car unreasonable not only because Gant could not have destroyed evidence or wielded a weapon, but also because the police could not have reasonably believed evidence related to Gant’s crime of arrest—driving on a suspended license—was located in the car at the time of the search.93

**Justice Scalia’s Concurring Opinion**

Justice Scalia wrote a concurring opinion in which he agreed with the judgment but critiqued the majority’s reasoning.94 He argued the majority maintained needless ties to Belton by retethering Belton to Chimel, thus requiring a suspect to present a risk to evidence or officers to invoke the rule.95 As an alternative to Belton–Thornton, Justice Scalia proposed a partial return to probable cause, which renders the Chimel analysis of a suspect’s spatial proximity to the vehicle or potential threat to evidence or officers moot.96 Under Justice Scalia’s proposed alternative, while officers could still commence a warrantless search of the suspect’s vehicle for evidence of the crime of arrest, they would need probable cause to search for evidence of other crimes.97

**Justice Alito’s Dissenting Opinion**

Justice Alito wrote for the dissent, joined by Justice Kennedy and Chief Justice Roberts, with Justice Breyer joining in part.98 Justice Alito criticized the majority on multiple points, focusing on the majority’s critique of Belton.99 He argued

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90 Id.
91 Id.
92 Id. (quoting Thornton, 541 U.S. 615, 632 (2004) (Scalia, J., concurring)).
93 Id. (“Neither the possibility of access nor the likelihood of discovering offense-related evidence authorized the search in this case.”).
94 Id. at 1724–25 (Scalia, J., concurring).
95 Id.
96 Id.
97 Id. at 1725.
98 Id. at 1726–32 (Alito, J., dissenting).
99 Id. at 1727.
the majority in Belton meant solely to establish a bright-line rule allowing police to search the passenger compartments of a suspect’s vehicle after every arrest.\textsuperscript{100} Moreover, Justice Alito contended the majority’s adoption of Justice Scalia’s concurring opinion in Thornton with little explanation will result in confusion as to what constitutes reasonableness.\textsuperscript{101}

\textit{Justice Breyer’s Dissenting Opinion}

Justice Breyer wrote a separate dissenting opinion.\textsuperscript{102} According to Justice Breyer, Gant failed to reach the burden necessary to overcome the presumption of stare decisis and persuade the Court to overrule Belton.\textsuperscript{103} His opinion, however, separated him from Justice Alito’s critique with respect to whether the Gant majority’s reasoning was flawed; he chose instead not to address the Gant majority’s reasoning.\textsuperscript{104}

\textbf{Analysis}

The rule in Arizona v. Gant is another in a long line of attempts to delineate reasonableness in automobile searches incident to arrest through the use of bright-line rules.\textsuperscript{105} With each iteration of a bright-line rule, however, the particular circumstances surrounding each disputed search have required the Court to stretch each bright-line rule to accommodate factually complicated challenges.\textsuperscript{106} The Court in Thornton ultimately stretched the bright-line approach to the point where law enforcement gained an entitlement allowing broad searches of vehicles with neither probable cause nor a warrant.\textsuperscript{107} The Court in Gant attempted to preserve the bright-line approach while addressing unconstitutionally broad

\textsuperscript{100} Id.
\textsuperscript{101} Id.
\textsuperscript{102} Id. at 1725–26 (Breyer, J., dissenting).
\textsuperscript{103} Id.
\textsuperscript{104} Id.
\textsuperscript{105} 129 S. Ct. 1710, 1718–20 (2009); see also supra notes 20–59, 79–104 and accompanying text (describing the history of the bright-line approach from its inception to the current ruling in Gant).
\textsuperscript{106} New York v. Belton, 453 U.S. 454, 460–61 (1981); see also supra notes 30–59 and accompanying text (discussing the expansion of the bright-line rule).
readings of Belton–Thornton, but instead created a two-part rule that frustrated the purposes for which Belton–Thornton was originally adopted: clarity and guidance for law enforcement.¹⁰⁸

Applying Gant in practice will present numerous problems.¹⁰⁹ In the first holding, the majority retethered Belton to the Chimel dual interests of protecting officer safety and the integrity of evidence.¹¹⁰ Lower courts never fully defined Chimel as applied to vehicles, and now courts must face the same issue.¹¹¹ In the second holding, recognizing the diminished expectation of privacy in vehicles, the Court imposed the “reason to believe” standard.¹¹² The Court has never fully defined reason to believe: some courts have defined it as probable cause, and other courts have defined it as some lesser standard than probable cause.¹¹³

Neither Holding Provides Clarity

In its first holding, the Gant majority retethered the Belton rule to the Chimel immediate control test by limiting searches of vehicles incident to arrest to areas within which a defendant could reach to access a weapon or destroy evidence.¹¹⁴ The majority modified Belton, however, without first clarifying the required level of spatial proximity between a defendant and a vehicle necessary to trigger the rule.¹¹⁵ Instead, the holding stated a suspect must be “unsecured” and capable of

¹⁰⁸ See infra notes 114–33 and accompanying text (arguing the Court in Gant established a new bright-line test which lacks clarity and does not guide law enforcement as to the boundaries of reasonableness in automobile searches incident to arrest).

¹⁰⁹ See infra notes 110–13 and accompanying text (asserting Gant will prove difficult for practitioners to apply).


¹¹¹ See Wayne R. LaFave, The Fourth Amendment in an Imperfect World: On Drawing ‘Bright Lines’ and ‘Good Faith,’ 43 U. PIT. L. REV. 307, 330 (1982) (discussing the Belton majority’s assertion that the bright-line approach arose from a lack of a clear definition of Chimel as applied to vehicles); infra notes 114–18 and accompanying text (contending the first Gant holding remains unclear until further litigation resolves the Chimel definition of “immediate control” as applied to automobiles).


¹¹³ See The Supreme Court 2008 Term—Leading Cases, 123 HARV. L. REV. 172, 181–82 (2009) (noting neither Justice Scalia in Thornton nor the Gant majority defined the reason to believe standard); infra notes 124–28 and accompanying text (critiquing the reason to believe standard and outlining numerous cases utilizing different definitions of reason to believe).

¹¹⁴ Gant, 129 S. Ct. at 1719 (“Accordingly, we reject [the State’s] reading of Belton and hold that the Chimel rationale authorizes police to search a vehicle incident to a recent occupant’s arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search.”); see also Chimel v. California, 395 U.S. 752, 768 (1969).

¹¹⁵ See Carson, supra note 39, at 1087–88 (describing the lack of a clear definition of the required level of temporal or spatial proximity to trigger the Belton–Thornton rule); infra notes 116–18 and accompanying text (describing the lack of clarity in the first Gant holding).
physically reaching into the vehicle to destroy evidence or brandish a weapon.\textsuperscript{116} Courts have never fully defined the level of spatial proximity necessary to satisfy the immediate control test.\textsuperscript{117} Though \textit{Gant} may serve to constrict readings of \textit{Belton} that allowed law enforcement complete access to a vehicle incident to an arrest, the lack of a precise definition of necessary spatial proximity provides little guidance to law enforcement.\textsuperscript{118}

When the \textit{Gant} majority adopted Justice Scalia’s concurring opinion in \textit{Thornton} as the second \textit{Gant} holding, it did so without sufficiently explaining its potential effects on evidentiary offenses.\textsuperscript{119} The concurring opinion in \textit{Thornton} addressed the admissibility of evidence obtained by a warrantless search incident to arrest which commenced after the discovery of evidence in a separate, lawful search of the defendant’s clothing.\textsuperscript{120} In contrast, the police arrested Gant for a non-evidentiary offense, which Justice Scalia’s concurring opinion in \textit{Thornton} did not specifically discuss.\textsuperscript{121} Rather than address evidentiary concerns, the \textit{Gant} majority applied the \textit{Thornton} concurring opinion by concluding officers did not have reason to believe they could find evidence of Gant’s crime in his car, as the crime—driving on a suspended license—required no further evidence

\textsuperscript{116} \textit{Gant}, 129 S. Ct. at 1715.

\textsuperscript{117} See Myron Moskowitz, \textit{A Rule in Search of a Reason: An Empirical Reexamination of Chimel and Belton}, 2002 WIS. L. REV. 657, 657–58, 661, 667–78 (2002) (concluding the \textit{Chimel} bright-line rule fails to recognize the complex factual realities of searches, and as such is difficult to clarify).

\textsuperscript{118} See Albert W. Aschuler, \textit{Bright Line Fever and the Fourth Amendment}, 45 U. PITT. L. REV. 227, 274 (1984) (noting the \textit{Belton} bright-line rule arose because the United States Supreme Court believed lower courts never resolved how to apply the \textit{Chimel} immediate control test to vehicles); Edwin J. Butterfoss, \textit{Bright Line Breaking Point: Embracing Justice Scalia’s Call for the Supreme Court to Abandon an Unreasonable Approach to Fourth Amendment Search and Seizure Law}, 82 TUL. L. REV. 77, 96–97 (2007) (discussing how \textit{Belton} arose from the lack of a clear definition of \textit{Chimel} as applied to vehicles).

\textsuperscript{119} \textit{Gant}, 129 S. Ct. at 1719; see also Brief Amicus Curiae of the ACLU and the ACLU of Arizona in Support of Respondent at 21-22, \textit{Gant}, 129 S. Ct. 1710 (No. 07-542) (arguing against the adoption of an evidentiary rule to resolve the issues presented by Gant’s non-evidentiary offense); Mark M. Neil, \textit{The Impact of Arizona in Support of Respondent at 21-22, Gant}, 129 S. Ct. 1710 (No. 07-542) (arguing against the adoption of an evidentiary rule to resolve the issues presented by Gant’s non-evidentiary offense); Mark M. Neil, \textit{The Impact of Arizona v. Gant: Limiting the Scope of Automobile Searches}, \textit{Prosecutor}, June 2009, at 38 (opining about the potential situations in which the \textit{Gant} rule may or may not limit automobile searches); \textit{infra} notes 120–28 and accompanying text (discussing the lack of clarity in the second \textit{Gant} holding).

\textsuperscript{120} \textit{Gant}, 129 S. Ct. at 1718–19.

\textsuperscript{121} \textit{Id.} at 1712. The police arrested Gant for driving on a suspended license, which is a non-evidentiary offense because it only requires evidence of a suspect driving a vehicle while possessing a suspended license. \textit{See ABEZ, REV. STAT. ANN. § 28-3473 (2008); State v. Brown, 986 P.2d 239, 241 (Ariz. Cr. App. 1999)} (describing the elements of driving on a suspended license). The police could not have discovered any further evidence of driving on a suspended license in Gant’s car, since evidence of the suspended license existed intangibly in police records, wholly apart from Gant’s car. \textit{Gant}, 129 S. Ct. at 1718–19. In contrast, the police arrested Thornton for felony possession of cocaine, which is an evidentiary offense because it requires tangible evidence of cocaine in the
to prove its commission. The majority’s application of Justice Scalia’s concurring opinion in *Thornton* to Gant’s case failed to address the finer nuances of evidentiary arrests, such as how officers may demonstrate the reason to believe standard based on the evidence discovered through a prior lawful search.

Furthermore, the *Gant* majority adopted the unclear reason to believe standard from Justice Scalia’s concurring opinion in *Thornton* without providing sufficient clarification. Justice Scalia’s concurring opinion in *Thornton* allows officers to conduct a warrantless search of the suspect’s vehicle incident to arrest of the suspect when they have reason to believe the suspect’s car contains evidence of the crime of arrest. Justice Scalia in *Thornton* did not define reason to believe. Since the *Gant* majority also failed to define the meaning of reason to believe, the standard remains unclear: some courts have defined reason to believe as probable cause, and some courts have defined it as some lesser standard. Clarifying the precise definition of the reason to believe standard will thus require further litigation.

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defendant’s possession. *Thornton*, 541 U.S. at 631–32; see also 21 U.S.C. § 841(a)(1) (2006); United States v. Cordoba-Murgas, 422 F.3d 65, 68–69 (2d Cir. 2005) (discussing how the quantity of drugs possessed is an important element of the offense of felony possession of cocaine, which thus requires evidence of the possession of the cocaine to demonstrate).

122 *Gant*, 129 S. Ct. at 1719.

123 Brief of the ACLU, supra note 119, at 25; infra notes 124–28 and accompanying text (discussing the lack of clarity in the reason to believe standard).

124 See infra notes 125–28 and accompanying text (discussing the reason to believe standard).

125 *Thornton*, 541 U.S. at 630–32; see also David S. Rudstein, Belton Redux: Reevaluating Belton’s Per Se Rule Governing the Search of an Automobile Incident to an Arrest, 40 WAKE FOREST L. REV. 1287, 1344–45 (2005). Professor Rudstein reads the reason to believe standard in Justice Scalia’s concurring opinion in *Thornton* as a “less-than-probable-cause” standard. *Id.* But see infra notes 127–28 and accompanying text (discussing conflicting definitions of reason to believe).

126 *Thornton*, 541 U.S. at 630–32. Justice Scalia did not explicitly define reason to believe, but quoted a criminal procedure treatise published in 1872 which described reason to believe as a justification for officers to search an arrestee. *Id.* at 630 (quoting 1 J. BISHOP, CRIMINAL PROCEDURE § 211, at 127 (2d ed. 1872)).


128 See *Gant*, 129 S. Ct. at 1719; *Thornton*, 541 U.S. at 631–32 (describing a suspect’s reduced privacy interest in his vehicle, and thus the lower degree of suspicion required to initiate a search); see also, e.g., United States v. Kellam, 568 F.3d 125, 136 n.15 (4th Cir. 2009) (referencing an
In addition, the *Gant* rule fails to protect privacy interests. The majority in *Gant* held the “circumstances unique to the vehicle context” justified the adoption of Justice Scalia’s concurring opinion in *Thornton*, which likely refers to the lesser privacy interest afforded to vehicles due to their mobile and public nature. However, searches of suspects’ vehicles must adhere to the constitutional protection of even reduced expectations of privacy. The *Belton–Thornton* bright-line approach resulted in no protection of privacy interests. *Gant* lacks a precise, clear definition; it therefore provides scant guidance to law enforcement and will prove incapable of protecting privacy rights until further litigation defines the unclear terms in both holdings.

129 See infra notes 130–33 and accompanying text (contending the *Gant* rule will not adequately protect privacy interests in automobiles).


131 See *Gant*, 129 S. Ct. at 1720 (stating searches of vehicles must respect even reduced privacy interests); Knowles v. Iowa, 525 U.S. 113, 117, 119 (1998) (finding circumstances surrounding a search of a vehicle incident to arrest must fall into well-defined exceptions to justify invading a defendant’s implicit privacy interests).

132 See Peter W. Fenton, *Search & Seizure Commentary*, CHAMPION, July 2009, at 51 (drawing a parallel between the *Belton–Thornton* bright-line approach and older British general warrants which allowed for broad, sweeping invasions of privacy).

133 See *Gant*, 129 S. Ct. at 1716, 1719 (adopting the *Chimel* immediate control test and Justice Scalia’s concurring opinion in *Thornton*); Aschuler, supra note 118, at 274 (discussing how the Court has never fully defined the *Chimel* immediate control test); Kit Kinports, *Diminishing Probable Cause and Minimalist Searches*, 6 OH. ST. J. CRIM. L. 649, 651 (2009) (criticizing Justice Scalia’s concurring opinion in *Thornton*); Dale Anderson & Hon. Dave Cole, *Search & Seizure After Arizona v. Gant*, ARIZ. ATT’Y, Oct. 2009, at 15–18 (pontificating about numerous issues which parties must litigate to clarify both *Gant* holdings); supra notes 114–33 and accompanying text (outlining the lack of clarity in both *Gant* holdings and the need for further litigation to define ambiguous terms).
The two *Gant* holdings rely on unclear reasoning. By retethering *Belton* to the *Chimel* dual interests of officer safety and evidence preservation, the first holding resurrected the immediate control test, which courts have never fully defined in the context of automobiles. In the second holding, the majority arbitrarily adopted the reason to believe standard of suspicion without explaining the definition of the standard or how it applies.

**Probable Cause Solves the Issues**

For decades, courts addressed searches of vehicles with two separate standards, depending upon whether officers arrested suspects prior to initiating searches or officers possessed probable cause to search. The automobile search incident to arrest doctrine began as a doctrine meant to simplify the application of *Chimel* to vehicles, but has now resulted in *Gant*—a confusing two-part rule requiring further litigation to clarify. Courts must instead cease the use of two separate standards and adopt probable cause—thereby triggering the automobile exception—as the sole standard for automobile searches in all situations.

Probable cause operates as a simple, straightforward standard, defined by decades of case law. With few exceptions, probable cause governs all searches,

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134 See supra notes 114–33 and accompanying text (critiquing the two *Gant* holdings).

135 See *LaFave*, supra note 111, at 330 (discussing how the United States Supreme Court decided *Belton* based on a belief that lower courts never defined *Chimel* as applied to vehicles); supra notes 114–18 and accompanying text (discussing how courts have never fully defined the immediate control test).

136 See, e.g., *Kinports*, supra note 133, at 651 (arguing Justice Scalia’s concurring opinion in *Thornton* lacks clarity); *Rudstein*, supra note 125, at 1344–45 (critiquing Justice Scalia’s concurring opinion in *Thornton*); supra notes 114–33 and accompanying text (arguing both *Gant* holdings provide scant guidance to law enforcement).

137 Compare *Gant*, 129 S. Ct. at 1720–22 (limiting *Belton* solely to areas in which an unsecured suspect could grab weapons or destroy evidence, as well as allowing searches of vehicles incident to arrest when officers have reason to believe evidence of the crime of the arrest exists in the vehicle) and *Thornton*, 541 U.S. at 620–21 (expanding *Belton* to allow searches of entire vehicles regardless of the suspect’s proximity to the vehicle) and *Belton*, 453 U.S. at 460–61 (creating the first bright-line rule allowing searches of areas into which a “recent occupant” of a vehicle could reach) with *Houghton*, 526 U.S. at 298 (allowing officers who have probable cause to believe evidence exists in the vehicle to search the entire vehicle—including the belongings of all passengers—without further restrictions on where in the vehicle they may search).

138 See supra notes 60–77 and accompanying text (outlining the history of the automobile search incident to arrest doctrine); supra notes 114–36 and accompanying text (critiquing both holdings in *Gant*).

139 See infra notes 140–54 and accompanying text (advocating for the adoption of probable cause and the automobile exception as the alternative to *Gant*).

140 See infra notes 141–47 and accompanying text (arguing probable cause operates as a straightforward standard, as opposed to the search incident to arrest doctrine, which remains vague).
regardless of whether the search targets a person, home, or vehicle.\textsuperscript{141} It serves as the definitive standard when balancing a suspect’s expectation of privacy and the interests of law enforcement.\textsuperscript{142} An extensive number of cases fully inform law enforcement of the nature of probable cause and its application to automobile searches.\textsuperscript{143} When law enforcement officers possess probable cause to search a vehicle, they satisfy the traditional constitutional standard to initiate searches, and can thus commence a presumably reasonable search.\textsuperscript{144} Courts determine probable cause by analyzing the totality of the circumstances surrounding a search from the objective position of a reasonable law enforcement official at the time of the arrest.\textsuperscript{145} This test is flexible because courts must analyze each challenge separately based on the facts of each individual search.\textsuperscript{146} In contrast, the federal bright-line approach has proven incapable of addressing the factual intricacies of Fourth Amendment challenges, leading courts to adopt unconstitutionally broad or vague standards entitling law enforcement to search vehicles with little to no required level of suspicion.\textsuperscript{147}

\textsuperscript{141} Arizona v. Hicks, 480 U.S. 321, 329 (1987) (referring to probable cause as the “textual and traditional standard” for searches); Brief of the ACLU, supra note 119, at 25.

\textsuperscript{142} See Chambers v. Maroney, 399 U.S. 42, 51 (1970) (referring to probable cause as the “minimum requirement” for a constitutional, reasonable search); 68 AM. J. UR. 2D Searches and Seizures § 11 (2009) (detailing probable cause).

\textsuperscript{143} See, e.g., Houghton, 526 U.S. at 306–07 (holding when law enforcement has probable cause to search a suspect’s vehicle for evidence, they may reasonably search all compartments and the contents of passenger belongings in the vehicle); United States v. Ross, 456 U.S. 798, 825 (1982) (expanding the automobile exception to the Fourth Amendment warrant requirement to allow searches of vehicles and vehicular compartments without a warrant if officers have probable cause sufficient to obtain a warrant at the time of the search); see also 2 LAFAVE, supra note 22, § 3.2 (outlining numerous cases which define probable cause historically and practically, as well as how to demonstrate probable cause existed at the time of a search).

\textsuperscript{144} See Whren v. United States, 517 U.S. 806, 818–19 (1996) (holding searches and seizures are presumed reasonable when police have probable cause); see also, e.g., United States v. Coleman, 458 F.3d 453, 458 (6th Cir. 2006) (holding a search reasonable under Whren since the officers had probable cause to search); United States v. Tovar-Valdivia, 193 F.3d 1025, 1028 (8th Cir. 1999) (referring to Whren when determining an officer did not have probable cause and thus did not commence a reasonable seizure).


\textsuperscript{146} See Gates, 462 U.S. at 233 (establishing the fact-based “totality of the circumstances” approach to determining probable cause); Brinegar v. United States, 338 U.S. 170, 175 (1949) (“In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.”); The Warrant Requirement, 38 Geo. L.J. Ann. Rev. Crim. Proc. 21, 23 n.59 (2009) (discussing the Gates “totality of the circumstances” approach to probable cause).

\textsuperscript{147} See Thornton, 541 U.S. at 620–21 (expanding the Belton “recent occupant” test to allow searches to commence after suspects exited vehicles of their own volition, resulting in carte blanche access to search the suspect’s entire vehicle incident to arrest); Belton, 453 U.S. at 460–61 (expanding the Chimel immediate control test to include passenger areas into which “recent occupants” of a
Adopting the automobile exception as the alternative to Gant simultaneously protects privacy interests while enabling law enforcement total access to vehicles, without the need for further litigation. When searches of vehicles commence with probable cause, numerous cases define the boundaries of reasonableness. The probable cause automobile exception explicated in Ross–Acevedo–Houghton addresses the problems in Gant by allowing thorough searches of vehicles while simultaneously recognizing and protecting a suspect’s privacy interests. After circumstances surrounding the search give rise to probable cause, Houghton allows law enforcement to search the suspect’s entire vehicle, including closed compartments and the contents of passenger belongings. Since Houghton allows officers possessing probable cause total access to a vehicle under the automobile exception, law enforcement requires no further litigation to understand the boundaries of reasonableness after commencing the search. Gant cannot currently protect privacy interests, however, since the two holdings remain unclear and require further litigation to clarify. Adopting probable cause through the automobile exception as the sole standard for automobile searches thus simultaneously protects the privacy interests of suspects while enabling law enforcement to thoroughly search for evidence.

148 See infra notes 149–54 and accompanying text (contending courts must adopt the automobile exception to protect privacy interests).
149 See supra notes 140–46 and accompanying text (explaining probable cause).
150 See Brief of the ACLU, supra note 119, at 19–20 (arguing the Fourth Amendment requires the government to have probable cause to justifiably infringe on a suspect’s privacy interests); Donald A. Dripps, The Fourth Amendment and the Fallacy of Composition: Determinacy Versus Legitimacy in a Regime of Bright-Line Rules, 74 MISS. L.J. 341, 381–84, 406–07 (2004) (discussing the high degree of suspicion required to search under the automobile exception, and how the search incident to arrest exception erodes the privacy protections offered by probable cause); infra notes 151–54 and accompanying text (discussing the thorough searches allowed under Houghton).
151 See Houghton, 526 U.S. at 298 (holding the automobile exception allows law enforcement to search the belongings of passengers); California v. Acevedo, 500 U.S. 565, 579–80 (1991) (expanding the automobile exception to include closed passenger compartments capable of concealing contraband); Ross, 456 U.S. at 825 (holding the automobile exception allows officers who possess sufficient probable cause to obtain a warrant may search an entire vehicle including the trunk since a warrant would authorize the search of those areas).
153 See supra notes 114–33 and accompanying text (discussing the lack of clarity in the Chimel immediate control test and the unclear definition of the reason to believe standard in Justice Scalia’s concurring opinion in Thornton).
154 See United States v. Carroll, 267 U.S. 132, 147, 155–57, 162 (1924) (establishing the automobile exception to the Fourth Amendment warrant requirement, but maintaining probable
CONCLUSION

In the first *Gant* holding, the majority retethered *Belton* to the *Chimel* dual interests of officer safety and evidence preservation. In the second *Gant* holding, the majority extended the rule beyond *Chimel* by allowing searches to commence if officers have reason to believe evidence of the crime of the arrest exists in the vehicle at the time of the search. The Court has never fully defined *Chimel* as applied to vehicles. The Court also adopted the reason to believe standard without explaining its precise definition. By doing so, the *Gant* ruling fails to protect privacy interests since clarifying both holdings requires further litigation. As an alternative, the automobile exception explicated in *Ross–Acevedo–Houghton* solves the problems in *Gant* by protecting privacy interests while simultaneously providing total guidance to law enforcement. When officers possess probable cause that evidence exists in a suspect’s vehicle, they may search the entire vehicle, including all compartments and the contents of passenger belongings. While the automobile exception allows for thorough searches, it remains limited by probable cause, which properly balances privacy interests with the government’s need to search. Since *Gant* fails to protect privacy interests, courts must protect these interests by adopting the automobile exception as the sole standard for automobile searches.

155 See supra notes 87–90 and accompanying text (discussing the first *Gant* holding).
156 See supra notes 91–93 and accompanying text (discussing the second *Gant* holding).
157 See supra notes 114–18 and accompanying text (contending courts have never defined the *Chimel* immediate control test).
158 See supra notes 119–28 and accompanying text (arguing neither Justice Stevens in *Gant* nor Justice Scalia in *Thornton* defined reason to believe).
159 See supra notes 129–33 and accompanying text (contending *Gant* cannot protect privacy rights since both holdings are unclear).
160 See supra notes 148–54 and accompanying text (advocating for the adoption of probable cause and the automobile exception as the sole standard for automobile searches).
161 See supra notes 148–50 and accompanying text (explaining the boundaries of reasonableness defined in *Houghton*).
162 See supra notes 137–47 and accompanying text (arguing probable cause protects privacy interests while enabling law enforcement to thoroughly search the vehicles of suspects).
163 See supra notes 148–54 and accompanying text (concluding the automobile exception should operate as the sole standard for vehicle searches).