

10:03: Search of Motor Vehicle Incident to Arrest

Case: State v. K.S., 35 FLW D533b, Fla. 2d DCA

Date: March 5, 2010

Subject: Under the circumstances, search of a vehicle glove box after arrest of the driver for fleeing and eluding did not satisfy the requirements for search of a vehicle incident to lawful arrest under *Arizona v. Gant*; firearm and statements properly suppressed

FACTS: At 8:48 in the evening, an officer observed K.S. driving a car without the headlights turned on. K.S. pulled up to a red light at an intersection, waited five to ten seconds, then proceeded through the red light. The officer followed K.S. into an alley where K.S. pulled into a driveway behind a house. Once K.S. stopped the car, the officer activated his overhead lights and directed his spotlight toward the vehicle. K.S. reversed the car towards the officer, and then accelerated away. K.S. subsequently drove into the back yard of a residence, and stopped the car. As the officer approached the car, he observed K.S. reaching towards the dashboard on the passenger side. K.S. was ordered out of the vehicle and arrested for fleeing and eluding. He was handcuffed and placed in the custody of backup officers. The arresting officer took the keys and used them to open the locked glove box in the suspect's car, as a search incident to arrest. Inside the glove box was a semiautomatic firearm. At the suppression hearing, K.S. argued that since he did not agree or consent to the search of his vehicle, the search was conducted in violation of the holding in *Arizona v. Gant*, 129 S. Ct. 1710 (2009). The trial court agreed, and suppressed the firearm and the defendant's subsequent statements. The state appealed.

RULING: The Second District Court of Appeal agreed with the trial court, and upheld the suppression.

DISCUSSION: Citing *Gant* and *Katz v. U.S.*, the court noted that warrantless searches are per se unreasonable under the Fourth Amendment, "subject only to a few specifically established and well-delineated exceptions." The court acknowledged that search incident to a lawful arrest is included among the exceptions, but noted that police may 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" or when "it is reasonable to believe evidence relevant to the crime of the arrest might be found in the vehicle." In *Gant*, the U. S. Supreme Court held that a search of *Gant*'s vehicle after his arrest for driving with a suspended license was unreasonable because he was handcuffed in a patrol car at the time of the search, and the officers could not have reasonably believed that the search would uncover evidence relevant to driving on a suspended license. In *K.S.*, the court applied the same analysis, and found that since K.S. was handcuffed and under the control of backup officers at the time of the search, and since the search of the glove box was not reasonably calculated to produce evidence relating to the crime of fleeing and eluding, the search did not satisfy the requirements of *Gant*.

NOTE: This case serves as a reminder that the old "Belton" rule (which allowed the search of a vehicle and all containers therein subsequent to a lawful arrest of an occupant) no longer applies; officers must now apply the *Gant* criteria when determining whether a search of a vehicle incident to the lawful arrest of a recent occupant is constitutionally permissible.

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Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.