

11-02 - Search & Seizure - Gant and Stolen Vehicles

Case: State v. Gentry , 36 FLW D534a (Fla. 5th DCA)

Date: March 11, 2011

Subject: U. S. Supreme Court's decision in *Arizona v. Gant*, limiting searches of motor vehicles incident to arrest, does not apply when the vehicle being driven by the suspect was stolen.

FACTS: Police noticed that the vehicle being driven by Gentry had been stopped at a stop sign at a four-way intersection, at 4:00 a.m., for approximately 20 minutes. The officers noted that the driver had his head down. When an officer pulled behind the vehicle, Gentry proceeded through the intersection, and was pulled over by the officer. After approaching Gentry, the officers determined that he had no valid driver's license. Gentry was arrested and placed in a patrol car. Officers then conducted a search of the vehicle, and seized several items. The officers also learned that the vehicle was stolen. Gentry moved to suppress the evidence, ruling that the officers had no reason to stop the vehicle, and that once he was arrested and placed in the patrol car, the holding in *Arizona v. Gant*, 129 S.Ct 1710 (2009) did not allow for a search of the vehicle incident to arrest. The state argued that the defendant did not have standing to contest the search of a stolen vehicle. The trial court held that the officers did have a valid reason to stop the vehicle, but agreed that the search was prohibited by *Gant*. The evidence was suppressed, and the state appealed.

RULING: The Fifth District Court of Appeal reversed the trial court on the search of the vehicle, holding that the protections afforded by *Gant* do not apply when the vehicle being searched is stolen.

DISCUSSION: As to the initial stop of the vehicle, the court noted that Florida courts have previously held that an officer is justified in stopping a vehicle to determine the reason for the vehicle's unusual operation, as a brief investigatory stop may be necessary in order to determine whether the driver is ill, tired, or DUI (citing *Bailey v. State*, 319 So.2d 22 [Fla. 1975] and *Ndow v. State*, 864 So.2d 1248 [Fla. 5th DCA 2004].) As such, the observations of the officers as noted above were sufficient for police to make inquiry of the driver. With regard to the search, the court relied on *State v. Singleton*, 595 So.2d 44 (Fla. 1992) and *Rakas v. Illinois*, 439 U.S. 128 (1978) for the proposition that a driver of a stolen vehicle does not possess standing to challenge the search of the vehicle. Accordingly, the *Gant* restrictions did not mandate suppression of the seized evidence in this case.

COMMENTS: Even though the driver of a stolen vehicle does not have standing to challenge the search of the vehicle in general, that driver (or passengers) may still enjoy an expectation of privacy in certain items which might be seized from the vehicle (e.g. computers, etc.) Officers should consult with their agency legal advisor or SAO to determine if a warrant may be necessary or advisable when searches of these types of seized items are contemplated.

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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.