

FLORIDA CASE LAW UPDATE 10-07

Case: State v. Williams, 35 FLW D1935a (Fla. 3d DCA 8/25/10)

Date: August 25, 2010

Subject: *Arizona v. Gant* interpreted and applied—
Search of a vehicle incident to the arrest of the driver was lawful. It was reasonable for officers to believe that more evidence relating to the drug offense for which driver was arrested could be found in the vehicle

FACTS: Police officers stopped the defendant's vehicle due to darkly tinted windows. As the officers approached the vehicle, they smelled marijuana, and upon looking into the vehicle, an officer saw what appeared to be a marijuana cigarette near the gear shift. Williams was arrested for possession of marijuana, and removed from the vehicle. While searching the vehicle incident to the arrest, officers also found a loaded handgun under the seat. The defendant moved to suppress both the firearm and the marijuana, arguing that the search was unconstitutional under the dictates of *Arizona v. Gant*. The trial court found that the search constituted an illegal warrantless search under *Gant*, and suppressed the evidence. The state appealed.

RULING: The Third District Court of Appeal reversed the trial court, finding that the search of the vehicle incident to the arrest of the driver was lawful under the circumstances.

DISCUSSION: In *Arizona v. Gant*, 129 S. Ct. 1710 (2009), the United States Supreme Court held that police may search a vehicle incident to a recent occupant's arrest, without a warrant, only when (1) "the arrestee is unsecured and within reaching distance of the passenger compartment at the time of search," or (2) "when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." *Gant* at 1714. In the *Gant* case, police arrested Gant for a suspended license, then searched his vehicle incident to the arrest. The Supreme Court held the search to be unreasonable, since Gant was secured at the time of the search, and police could not reasonably believe that searching the vehicle would reveal evidence of driving on a suspended license. However, in this case, the 3d DCA found that the officers made a lawful stop, and arrested Williams after smelling marijuana and seeing marijuana in the vehicle. Since the officers could reasonably believe that a search of the vehicle may lead to additional evidence relating to the marijuana charge, the search met the requirements of *Gant*, and was lawful.

COMMENTS: Officers should always be prepared to explain why vehicle searches incident to arrest were reasonably calculated to uncover evidence relating the offense of arrest, and document their reports accordingly.

John E. Kemner
Regional Legal Advisor
Florida Department of Law Enforcement
Jacksonville Regional Operations Center

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.