



Police Law Bulletin



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Outside of the Vehicle Context, Officers May Conduct Warrantless Searches of Containers Incident to Arrest Only When the Arrestee is Unsecured and Within Reaching Distance of the Container at the Time of the Search – Pgs. 1-4



FOURTH CIRCUIT COURT OF APPEALS

**United States v. Davis, No. 20-4035 (7 May 2021).**

On March 1, 2017, at around 2:45 pm, Officer Richardson of the Holly Springs Police Department stopped a Honda Accord driven by defendant Howard Davis because he believed the vehicle's windows were tinted too dark in violation of the law. Richardson approached Davis and explained why he had pulled him over. After obtaining Davis' license and proof of insurance, a search of relevant databases revealed that Davis had a history of felony drug charges and convictions. Two additional officers arrived as backup. About three minutes into the stop, while Richardson talked with the other two officers, Davis put his hand out of the window and made a pointing gesture indicating that he was leaving. Davis then drove off without his license or proof of insurance, which were still in Richardson's possession. The officers chased Davis through a residential neighborhood. The pursuit continued until Davis reached a cul-de-sac, drove in between two houses and into someone's backyard, got out of his vehicle carrying a backpack, ran on foot into a swamp, and got stuck in knee-high water. Richardson drew his service weapon and ordered Davis out of the swamp. Davis returned to dry land, dropping the backpack, and lying down on his stomach. Richardson frisked Davis and found a large amount of cash on his person. Richardson then handcuffed Davis and placed him under arrest for several traffic violations, including felony speeding to elude.

Afterwards, Richardson unzipped the closed backpack and discovered large amounts of cash and two plastic bags containing what appeared to be cocaine. A search of Davis' vehicle revealed a digital scale and a bag containing bundles of cash. A witness also reported having seen Davis toss a firearm out of his car window while fleeing. Acting on that information, officers recovered a .45 caliber handgun from Davis' path of flight.

Davis was indicted on three controlled substance and firearm offenses. Before trial, Davis filed a motion to suppress, contending the evidence seized from his backpack and vehicle should be

suppressed because the officers' warrantless searches violated his Fourth Amendment rights. The district court denied his motion. A jury found Davis guilty on all counts and Davis appealed.

The Fourth Amendment guarantees people the right to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures. A warrantless search by the police is invalid unless it falls within a well-delineated exception to the Fourth Amendment's warrant requirement. One exception authorizes searches incident to arrest. The search incident to arrest exception allows arresting officers to search the arrestee's person and the area within the arrestee's immediate control.

This exception has its origins, in part, from a 1969 decision in *Chimel v California*. In that case, police engaged in a warrantless search of the defendant's entire home, including his attic and garage. The officers justified the search as a search incident to arrest. In articulating the limits of the search incident to arrest exception, the Supreme Court emphasized that it was reasonable for the arresting officers to search the person being arrested and the area within his reach in order to remove any weapons that the arrestee might seek to use to resist arrest or effect his escape, and in order to prevent the concealment or destruction of evidence. The Court concluded that there was ample justification for a search of Chimel and the area within his immediate control, but because there was no constitutional justification for the warrantless search of his *entire* home, the Court held the search unreasonable.

In 1981, the Supreme Court issued its opinion in *New York v. Belton*. An officer arrested four occupants of a vehicle for possession of marijuana. While searching the car, the officer unzipped a jacket pocket he found in the back seat and discovered cocaine. Recognizing that the courts had found no workable definition of "the area within the immediate control of the arrestee," the Court held that when a police officer has made a lawful custodial arrest of an occupant of a motor vehicle, the officer may, incident to that arrest, search the passenger compartment of the automobile.

Over time, the Court's opinion in *Belton* resulted in lower court decisions that "treated the ability to search a vehicle incident to arrest of a recent occupant as a police entitlement rather than as an exception justified by the twin rationales of *Chimel v California*." Therefore, the Court revisited the search incident to arrest exception in *Arizona v Gant*. In *Gant*, officers arrested the defendant for driving with a suspended license and locked him, handcuffed, in the back of a patrol car. Two officers then searched defendant's vehicle and found drugs and a firearm. On review, the Supreme Court found that the search was not a valid search incident to arrest, reaching two separate holdings. First, the Court noted that to read *Belton* as authorizing a vehicle search incident to every recent occupant's arrest would untether the rule from the justifications underlying the *Chimel* decision. Relying on the rationales articulated in *Chimel* – officer safety and preservation of evidence – the Court held that police may search a vehicle incident to arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment of the vehicle at the time of the search (which the Court went on to note should rarely occur). Second, the Court concluded that circumstances unique to the vehicle context justify a search incident to arrest when there is reasonable suspicion to believe that evidence of the crime of arrest might be found in the vehicle.

On appeal, Davis urged the court to apply the first *Gant* holding outside the vehicular context. Relying on language in *Chimel* and *Gant*, and decisions from other appellate courts, the Fourth Circuit Court of Appeals agreed. Accordingly, the court concluded that, *outside of the vehicle context, officers may conduct warrantless searches of containers incident to arrest only when the arrestee is unsecured and within reaching distance of the container at the time of the search. The critical inquiry will be whether the defendant could reasonably have accessed the container at the time of the search.* In the case at hand, Davis was secured and not within reaching distance of his backpack when the officer unzipped and searched it (although near the backpack, his reach was limited due to the handcuffs). Thus, the court found that Davis' motion to suppress evidence seized from his backpack should have been granted.

The Court of Appeals also found that evidence seized from Davis' vehicle should have been suppressed. The search of Davis' vehicle was based upon the automobile exception to the warrant requirement. The automobile exception allows police to conduct a warrantless search of a vehicle if the vehicle is in a public place and there is probable cause to believe that it contains evidence of a crime. Once evidence from defendant's backpack was suppressed, the only evidence remaining to justify a search of defendant's vehicle was his flight and the cash discovered on his person. The Court of Appeals held that these facts alone, although perhaps sufficient to articulate reasonable suspicion, were insufficient to establish probable cause.

What Does This Mean?

Searches Incident to Arrest When Arrestee Is Occupant of Motor Vehicle

The ruling from *Arizona v Gant* remains undisturbed. If officers arrest an occupant of a motor vehicle, officers may continue to search incident to arrest:

- the individual arrested; and
- the passenger compartment of the vehicle (including containers) if
 - the arrestee is unsecured and within reaching distance of the passenger compartment of the vehicle at the time it is searched (the court noted that this should rarely occur though since officers usually will have the means to secure an arrestee and distance him/her from the vehicle); or
 - there is reasonable suspicion to believe evidence of the crime for which the individual was arrested may be in the passenger compartment and/or container within the passenger compartment

Remember that the search of a vehicle incident to arrest has generally never included the vehicle's trunk.

Searches Incident to Arrest Outside of the Motor Vehicle Context

While *Davis* is a significant case, until further clarified by our appellate courts, it's immediate impact may be limited to a narrow set of facts, namely those in which an arrestee:

- rids himself of a container *after* being taken into custody, or
- the arrestee owns/possesses a container near, but not on him, at the time of arrest and the officer wants to search the container incident to arrest.

The first three examples below describe situations which are likely not impacted by *Davis* and thus, their analysis should be nothing new or surprising.

- (1) If an officer attempts to take an individual into custody and the suspect discards a container prior to the officer effectuating the arrest, the officer may search the container, not incident to arrest, but rather as abandoned property.
- (2) If an officer takes an individual into custody and the arrestee disclaims ownership of a container within his or her possession or control, then the arrestee will likely be considered to have abandoned the property and any expectation of privacy in it, thereby allowing the officer to conduct a warrantless search of the container.
- (3) If an individual is taken into custody while in actual possession of a container (such as wearing a backpack), *Davis* does not prohibit an officer from searching the container incident to arrest. In *United States v. Robinson*, the United States Supreme Court considered the scope of the search incident to arrest exception, and upheld the warrantless search of an arrestee as well as a container (in that case, a cigarette package) found on his person. *Davis* seems distinguishable in that the arrestee divested himself of the backpack at the time he was taken into custody, as opposed to having the container on his person.

The last two examples demonstrate search incident to arrest situations that would be impacted by *Davis*.

- (1) If an individual rids himself of a container *after* being taken into custody, *Davis* holds that the container may only be searched incident to arrest if the arrestee could reasonably access the container at the time it is searched.
- (2) If an individual is taken into custody and owns/controls a container near, but not on, his person at the time of arrest, it appears that *Davis* would only allow a search of the container incident to arrest if, the arrestee could reasonably access the container at the time it is searched.

In these situations, officers may wish to ask if the container is the arrestee's. If the arrestee indicates that it is not, and there is no one else to claim ownership, the container could be searched as abandoned property. If the arrestee indicates that the container is his, then an officer could always ask for consent to search the item. If the officer does not seek consent, or the arrestee declines to provide consent, the officer may ask the arrestee if he wants the officer to bring the item to the jail with him. If the arrestee indicates that he does, an inventory search will be conducted at the jail.