SEARCH INCIDENT TO ARREST

WHO, WHAT AND WHEN

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OVERVIEW

- Search Incident to Arrest (SIA) as exception to warrant requirement
- Search of the Person
  - Scope
  - Timing
- Search of Arrestee’s possessions
- Search of vehicles incident to arrest
- Probable cause based vehicle searches
- Inventory searches
- Treatment of cell phones in analysis

OBJECTIVES

- Identify when a search incident to arrest is legally valid
- Describe the permissible scope of a search incident to arrest
- Distinguish between a search incident to arrest and an inventory search, or a probable cause based vehicle search
- Understand the permissible scope of a search of a cell phone incident to arrest
**BASIC PRINCIPLES**
- There must be an arrest
  - “Full custodial” arrest
  - Basis for arrest must precede the search
  - Formalization of the arrest must occur after the search
- Person arrested may be searched
- What else may be searched depends on where the arrest took place
- Justification for search NOT premised on “probable cause”

**CHIMEL DOCTRINE**
*Chimel v. California (1969)*
Police arrested Chimel in his home – burglary of coin shop

Searched entire home, attic, garage, and workshop

**BRIGHT LINE RULE**
- When an arrest is made, it is reasonable for an officer to
  - “contemporaneous” with the arrest
  - search person of arrestee and
  - areas into which arrestee might reach and retrieve weapons or destroy evidence
- Based on notions of
  - officer safety
  - preservation of evidence
SEARCH OF PERSON

**U.S. v. Robinson (1973)**

- Robinson arrested for driving with revoked license
- Officer searched his person incident to arrest
- Cigarette pack from shirt pocket contained heroin

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ROBINSON’S BRIGHT-LINE RULE

Incident to lawful arrest, officer can search arrestee’s person and open any containers located on the person

*Full search of the person is not only an exception to warrant requirement of 4th Amendment, but is also a reasonable search*

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DELAYED SEARCHES OF PERSONS


- Permitted search of arrestee’s clothing at jail 10 hours after arrest
- Seemed to abandon contemporaneous limit for searches of person
- “Searches and seizures that could be made on the spot at time of arrest may legally be conducted later when accused arrives at place of detention”
ARRESTEE’S POSSESSIONS
U.S. v. Chadwick (1977)

- Defendants arrested at train station
- Defendant’s auto and footlocker taken but not searched
- *Not valid* to search footlocker 1.5 hours after arrest without warrant

“AREA OF CONTROL”

- “Potential dangers lurking in all custodial arrests”
- Officer need not calculate probability that weapons/destructible evidence will be found
- Officer may make warrantless search of items within immediate control area which are large enough to conceal a weapon or evidence of a crime

CHADWICK

*Search of luggage or other property not immediately associated with the person of arrestee is not incident to that arrest if:
- Property within exclusive control of officers, and
- No danger arrestee can gain access to seize weapon/destroy evidence*
**A Dubious Jurisprudence of Containers…**

- Immediately associated
  - Wallets
  - Purses
  - Backpacks
  - Address books
  - Pagers

- Not closely associated
  - Luggage

Analysis is unhelpful: it is focused on when, where, and what *not why*

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**Arrest in a Building**

*Maryland v. Buie (1999)*

- Officers entered Buie’s house to arrest him pursuant to a warrant
- Buie emerged from the basement and was arrested
- Officer entered basement and discovered incriminating evidence

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**Buie’s Two Tiered Approach**

- SIA
  - “as a precautionary matter and without pc or reasonable suspicion, officer could look into closets, and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched”

- Consistent with *Terry v. Ohio* and *Michigan v. Long*
  - To go beyond that area “articulable suspicion” is needed
Police searched passenger compartment of arrestee’s vehicle after occupants exited vehicle.

Defendant argued passenger space not in his immediate vicinity (grab space) when search occurred.

Contemporaneously with lawful custodial arrest of vehicle’s occupant, officer may search entire passenger compartment of car and any containers (open or closed) located therein.

Container is any object capable of holding another object:
- Glove compartment
- Console
- Any receptacle in passenger compartment
- Luggage
- Boxes
- Bags
- Clothing

Tip that drugs being sold from house.

Officers knocked:
- Gant answered and stated that owner not there

Officers left but then discovered outstanding warrant for Gant’s arrest - DWSL.

Officers return and when Gant arrived in a car, officers arrested Gant:
- Gant handcuffed and locked in squad car.
**Arizona v. Gant (2009)**

- Officers searched Gant’s car
  - Gun
  - Bag of cocaine in pocket of shirt laying on back seat

**Argument and Evidence**

- **Gant Argued:**
  - *Belton* did not authorize search of his auto once he was arrested and handcuffed in back of squad car—he posed no threat to officer safety
  - Arrest was for traffic offense, for which no evidence could be found in vehicle.

- **Government’s position:**
  - When asked at suppression hearing why search was conducted, officer responded
  - “Because the law says we can do it.”

**Gant’s Two New Holdings**

1. No search of vehicle incident to occupant’s arrest once arrestee is secured and cannot access interior of vehicle
2. Circumstances unique to auto context justify a search when there is *reason to believe* that evidence of offense of arrest might be in vehicle
**Gant's Rationale**

- Protects privacy interest
  - Belton's authorization for the police to search every purse, briefcase, or other container in the passenger compartment whenever an individual is caught (and arrested) for committing a traffic offense
  - "creates a serious and recurring threat to the privacy of countless individuals"

**Gant's Rationale**

- Belton's bright line rule is not so bright
  - The rule was intended to eliminate scene confusion with respect to the scope of an officer's right to search
  - Cases have not been uniformly decided
    - Courts have varied on the determination whether search was "contemporaneous" with the arrest
    - Courts have varied on how close arrestee must be to vehicle when approached by officer

**Gant's Rationale**

- Belton not necessary for officer's safety or destruction of evidence concerns
    - Officer may search passenger compartment if he/she has reasonable suspicion that individual, whether arrestee or not, is dangerous and might access vehicle for weapons
  - U.S. v. Ross (1982)
    - Officer may search any area of vehicle when he/she has probable cause that vehicle contains evidence of criminal activity
Does 4th Amendment allow warrantless search of cell phone contents when it is seized incident to a valid arrest?

U.S. v. Ortiz (7th Cir. 1996)
- Upholding retrieval of information from pager

U.S. v. Finley (5th Cir. 2007)
- Upholding search of cell phone recovered from arrestee’s pocket

U.S. v. Murphy (4th Cir. 2007)
- Phone “on arrestee.”
- Need for preservation of evidence
- Relied on Finley & Ortiz

Diaz arrested after controlled buy of narcotics
- Phone “on his person”
- Phone seized an hour later at police station
- Phone searched during interrogation – 30 minutes later
Cell phone immediately associated with arrestee (on his person at time of arrest); delayed search permissible under Edwards.

Defendant wanted to put on pants after he was arrested in home

Officer’s searched pants and found cell phone

Phone seized incident to arrest

Could officer search phone?

Pants entered “grab area”

Officers could search incident to arrest
  • Phone not on arrestee’s person at time of arrest
  • Phone was in exclusive control of officer

Warrantless search of data supported by exigent circumstances because the data could be lost
**U.S. v. LaSalle (D. Hawaii 2007)**

- Search of D’s cell phone was not incident to arrest when time between arrest and search was between 2 to 4 hours later
  - Not contemporaneous in time or place
- **Edwards** only applies to LaSalle’s person or his clothing - not to his cell phone

**Cases Rejecting Search of Cell Phone Incident to Arrest**

  - Arrest pursuant to drug warrant for crime committed much earlier
  - Phone removed from defendant’s person
- **United States v. Quintana**, 594 F.Supp. 2d 1291 (M.D. Fla. 2009)
  - Defendant arrest for DWSL
  - Phone removed from defendant’s person

**State v. Smith**, 920 N.E. 2nd 929 (Ohio 2009)

- Defendant arrested after responding to call on his cell phone by undercover officer arranging drug buy
- Cell phone on defendant’s person
- Court held:
  - Cell phone not a *closed container* for purpose of 4th Amendment
  - Because cell phone can store large amount of data, there is a heightened expectation of privacy
  - Warrant to search is required
When is it permissible to search this cell phone?

SIA and Gant; Probable Cause

PC Based Vehicle Searches


If PC to believe vehicle contains evidence of a crime, any part of vehicle and its contents “that may be capable of concealing the object of the search” may be searched without a warrant

What can be searched?

• Entire vehicle and any contents located within it.

When applicable?

• Whether or not occupant of vehicle is arrested
• When there is PC to believe vehicle contains evidence of a crime
**SCOPE: PC-BASED VEHICLE SEARCHES**

- Defined by object of the search and places where there is Probable Cause to believe it may be found

- **Timing of search**
  - Can search on the scene or later on at the station

**INQUIRY AS TO DIGITAL EVIDENCE IS**

1. Do police have PC to believe vehicle contains evidence of a crime?
2. If so, any part of vehicle and its contents “that may be capable of concealing object of the search” may be searched without warrant

   *i.e., can officer establish probable cause that:*

   - Cell phone in car to make drug deal
   - GPS device used to find location
   - Event recorders in car

**INVENTORY SEARCHES**

- Permits police to thoroughly search vehicles that have been lawfully impounded for any reason, or personal effects

- Must be pursuant to routine administrative policy

- Cannot be solely to look for evidence of criminal conduct
**PURPOSES OF INVENTORY SEARCH**

- Protect owner’s property
- Protect police against false claims for stolen/lost property
- Protect police & others from potential danger

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**PERMISSIBILITY OF INVENTORY SEARCHES**

**Two Inquiries**

Was original seizure of item reasonable?
Was inventory properly conducted pursuant to routine administrative policy?

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**INVENTORY SEARCH OF DIGITAL DEVICE**

- Arguably can *not* search cell phones, computers, other digital devices that are lawfully seized and subject to inventory
- No reason to retrieve data to protect it