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When Can the Police Legally Search Your Car After an Arrest?

Generally, [Fourth Amendment](#) of the U.S. Constitution provides that the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

Accordingly, the Constitution of the United States generally prohibits the police from searching your vehicle without a warrant under the Fourth Amendment. Of course, this general rule doesn’t apply if you willing waive your rights. If the police ask if they can search your car, then you should say no. If the police have asked to search your car, then they probably know they shouldn’t be and, if they go ahead and do it anyway, then an experienced [attorney](#) can handle the situation later.

However, what if the police are not asking if they can search your car, but, rather, search it without a warrant after legally arresting you? The Supreme Court has recognized that the Fourth Amendment has limits and has created various exceptions to the general rule that a vehicle cannot be searched without a warrant.

Search Incident to a Lawful Arrest

Probably the most important exception for clients arrested after a traffic stop is the “search or seizure without a warrant as an [incident to lawful arrest](#).” *Chimel v. California*. As initially envisioned by the Court, this rule was designed to serve two purposes:

Following this decision, police and prosecutors across the country argued that these reasons meant anyone arrested after a traffic stop could have their car searched. Many Courts agreed with them and the exception swallowed the rule. In [Thornton v. U.S.](#), Justice O'Connor wrote that the "Court decisions seemed...to treat the ability to search a vehicle incident to the arrest of a recent occupant as a police entitlement rather than an exception justified by the twin rationales."

Of course, it is not always necessary to search a vehicle to make sure someone arrested is disarmed and to "preserve evidence." For example, there is little reason for the police to search a glove compartment after an arrest for excessive speeding where an unarmed individual handcuffed in the back of a police car has provided proof of insurance, registration and a driver's license. All the evidence the police need is already in their possession. Yet, case law appeared to allow for this type of search no matter what the facts or circumstances.

Fortunately, the Supreme Court put limits to this abuse in its decision of [Arizona v. Gant](#). In this case, the Court limited this exception by only allowing officers to search areas, such as a passenger compartment, when the arrested person 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 arrest might be found in the vehicle.'" (emphasis added). (In Illinois, another relevant case is *People v. Bridgewater*, 375 Ill. App. 3d 414 (2009)).

This decision means that an officer can search a vehicle without a warrant when they have an actual threat to their safety or if there is some justifiable basis to believe there is evidence in the car/vehicle related to the crime the person was arrested for. Because it is so rare that an officer will be unable to safely secure the safe arrest of a vehicle occupant, the rule basically means that an officer can only search a vehicle incident to a lawful arrest for evidence related to that arrest (ie if you are arrested for a traffic violation or suspended license the police probably won't be able to search your car).

Thanks to this Supreme Court decision, police officers are now prohibited from searching a vehicle after an arrest for any reason whatsoever. Again, this rule will not apply if you are willing to waive your rights. If you get arrested, and the police want to search your car, tell them no! If they go ahead and search the car anyway, let them without saying anything and without fighting them. If the police have asked to search your car, then they probably know they shouldn't and, if they go ahead and do it anyway, then an experienced attorney can handle the situation later.

This decision is an example of an instance when the Supreme Court actually protects the rights of U.S. Citizens. The search warrant requirement is meant to protect the privacy of citizens from the intrusive eyes of the government. This protection should only be waived

when the particular situation makes it necessary. Prior to *Gant*, the decision of whether a citizen's privacy should be invaded in the context of a car search was put in the hands of the police. The police's primary job is to investigate crime and arrest criminals. As the Supreme Court has stated, "the right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals." *Chimel v. California*. This decision goes a long way towards correcting the error created by past decisions that allowed police to search a car because they had just come up with some excuse to put a man or woman under arrest.

Inventory Searches

Unfortunately, you can expect the police to continue to try to search your car after you are arrested and get away with it. Remember when I said the Supreme Court has created various exceptions to the general rule a vehicle cannot be searched without a warrant? The *Gant* decision only addressed one of them: a search incident to a lawful arrest. There are several other exceptions the police are now going to have to look to for searching your car.

The first is the "inventory search" exception. In Illinois, the police could conduct an "inventory search" after an arrest by impounding your car to "protect" the police department and the "vehicle owner" against lost property claims. It is common knowledge that this type of search is really just another way the police can perform a warrantless search of a vehicle. It is also usually allowed when a driver is arrested, or contraband is found in the car, etc. It is likely you are not going to suppress the evidence unless the police did not follow proper procedure in impounding a vehicle. See. e.g. *Harrington v. Heavey*, No. 04 C 5991, 2006 U.S. Dist. LEXIS 84964. *People v. Hundley*, 156 Ill. 2d 135 (1993), *People v. Ursini*, 245 Ill. App. 3d 480 (2nd Dist. 1993), and *People v. Alewelt*, 217 Ill. App. 3d 578 (3rd Dist. 1991).

Inevitable Discovery

This exception allows in evidence if the discovery of the evidence was "inevitable" through another process. With regards to car searches, various Courts are allowing in evidence that should be suppressed under *Gant* under the "inventory search" exception. One case held that if the evidence "would have been uncovered during a routine inventory search of the vehicle upon impound," the evidence is admissible. This means that if evidence seized during a search of your car could have been found pursuant to an "inventory search" of the vehicle, the government is going to let it in. Worse, this allows for police to make a warrantless search of your vehicle and, after finding evidence, impound the vehicle and argue that the evidence would've been found anyway. The truth of the matter is the police before *Gant* would not want to impound your vehicle because of the cost and paperwork, but now will likely change their policies to increase the cars that they tow, and impound, following an arrest.

The only real winners could very well be the tow truck companies and impound lots.

Probable Cause

Another excuse the police could use to argue that a warrantless search was valid is by arguing that they had “probable cause” to conduct this search. Generally, an officer could justify a search when there is reason to believe a crime is committed and the officer is searching in an area where he believes evidence of that crime exists. In other words, if you are being arrested because the police believe you have kidnapped someone and put them in your car trunk, then it is likely they can search your car trunk to find that kidnapped person. This exception will often overlap with the second purpose for the search incident to a lawful arrest exception, but that won’t always be the case.

Call [Shunneson Law Office](#) to Protect Your Rights

If you have had your car searched, and believe the search was illegal, then an attorney is absolutely necessary to protect your rights. We will force the police to justify their searches and seizures with articulable, intelligent reasons and demand they provide proof that the evidence was gained through valid policy and procedure. If it is not obtained through legal means, we will suppress the evidence.

As always remember, when you are dealing with the police, there are four rules to follow:

1. You have a constitutional [right to remain silent](#). Don’t say anything to them at a traffic stop except providing them with a valid driver’s license, proof of insurance, and registration.
2. You will not be able to make up a good story or excuse that the police will “buy” since they are out to get you and won’t believe you anyway;
3. The police won’t believe you, so why would you believe or trust them? Don’t!
4. Don’t argue, resist or fight them when they are handcuffing you.

At [Shunneson Law Office](#) I am devoted to protecting your rights and helping you through your difficult times. Call (847) 693-9120 for more information.

-(Reporter): “Do the recent Supreme Court decisions make it harder to convict a suspect?”

(Response) “Of course they do, what were they (the bill of rights) written for? Guaranteeing a man a right to an attorney, does that not make it harder to convict him? Guaranteeing a right against search and seizure, does that not make it harder to convict him?” -United States Supreme Court Justice Black

-Drake Shunneson (copyright 2012)

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