

State v. Valdez

Session Materials

State v. Stroud

(WA / 1986)

- *Automatic* search of vehicle incident to arrest is OK

Arizona v. Gant

(US / 2009)

- If suspect is secured in police car, *automatic* search of vehicle incident to arrest is **OK**, if...
 - No delay, and
 - For evidence of the crime in question or other crime where PC exists

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State v. Valdez

(WA / 2009)

- If suspect is secured in police car, *automatic* search of vehicle incident to arrest is **NEVER OK**

*NOTE: Officers may still perform a frisk/sweep of a vehicle when **specific, articulable facts** indicate the immediate need to check for persons or weapons.*



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In a Nutshell:

It used to be (*Arizona v Gant*) that if suspect was arrested from a vehicle, and the officer had reason to believe that evidence of that crime was inside the vehicle, search of the vehicle incident to arrest was allowed – THIS IS NO LONGER THE RULE ACCORDING TO VALDEZ. If we want evidence from the car, we should get a warrant.

- ✓ If suspect is arrested and still has physical access to interior of vehicle, search of the vehicle incident to arrest may be OK. (*However, this is not common or recommended. Bad guy should not be loose and nearby to you during a vehicle search.*)
- ✓ If passengers still have physical access to interior of vehicle, search of the vehicle incident to arrest may be OK if they pose a risk to officer safety or of evidence destruction. (*But we already know that we are allowed to enter a protected area for officer safety and to prevent destruction of evidence.*)
- ✓ Safety frisk/sweep of vehicle is still OK.
- ✓ Inventory procedure according to department policy is still OK.
- ✓ Warrant search of vehicle is still OK.
- ✓ Consent search of vehicle is still OK.
- ✓ Exigent entry into any protected area (including vehicles) is still OK.

Explanation:

In 2009, the *Arizona v. Gant* decision rendered by the US Supreme Court significantly changed what police officers were allowed to do with vehicles driven by suspects at the time of arrest. Prior to *Gant*, the bright line rule had been that police could always search a vehicle incident to arrest. Then *Gant* came out and said, “Only if there’s no delay, and there’s *related* evidence in the vehicle. Or if the suspect is still right there next to the vehicle (not really safe, feasible, or smiled upon by the courts).”

Well, now the 2009 Washington case of *State v. Valdez* has further restricted vehicle searches incident to arrest. The new rule is easier to remember – because it’s basically, “You can’t.”

However, let’s not confuse this rule with a frisk/sweep of the vehicle in the interest of officer safety based on ***specific, articulable facts***. If those frisk factors are present, then police may do a frisk/sweep of the interior, reach or lunge areas, or other area of the car (like the trunk); but the focus is on looking for people and/or weapons that can cause immediate harm. And again, there must be ***specific, articulable facts***.

Let’s also remember that there are still other legal methods for gaining access to the inside of a protected area:

- Inventory procedure as per department policy
- Warrant search
- Consent search
- Exigent circumstance (immediate danger to officer or others, hot pursuit, destruction of evidence, etc.)

As is always the case, officers should check with their supervisors, prosecutors, and department legal advisors to verify this.

