



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



STATE OF ARIZONA v. RODNEY JOSEPH GANT, CR-06-0385-PR

Parties and Counsel: The petitioner is the State of Arizona, represented by Eric J. Olsson, Assistant Attorney General. The respondent is Rodney Joseph Gant, represented by Thomas Jacobs.

Amicus Curiae: A joint brief was filed by the Arizona Law Enforcement Legal Advisor's Association (ALELAA), represented by Michael E. McNeff, and the Association of Chiefs of Police (AACP), represented by Eric B. Edwards.

FACTS:

In 2000, police, acting on a tip that narcotics activity was taking place at a residence, conducted a records check of resident Gant and learned that he had an outstanding warrant for driving with a suspended license. In the evening, police arrested two people at the residence, one for possession of drug paraphernalia and the other for giving false information. Gant drove up while the police were there. As he stepped out of his vehicle, an officer shined a flashlight on the car, called to him, and Gant walked toward the officer. Gant was about 8 to 10 feet from his car when the officer placed him under arrest, handcuffed him, and locked him into the back of a nearby patrol car. Within one to three minutes of the arrest, two officers searched Gant's vehicle and found cocaine in the pocket of a jacket in the car and a weapon. At the time police searched Gant's car, the two other individuals who had been arrested also had been handcuffed and locked into the back of patrol cars.

Gant was charged with unlawful possession of cocaine for sale and unlawful possession of drug paraphernalia. He filed a motion to suppress, which the court denied on the ground that the search of his car was lawful because it was incident to his arrest. Gant subsequently was convicted of the charges. The court of appeals reversed on the ground that the motion to suppress should have been granted. The court found *New York v. Belton*, 101 S.Ct. 2860 (1981) distinguishable because, in this case, Gant stopped his vehicle and got out of it, not in response to police direction, but voluntarily. In *Belton*, by contrast, the police confronted the suspect while he was still in his car. The appeals court found further that the record simply did not establish that the police, by shining a flashlight on Gant's car, actually had confronted him or signaled confrontation while he was still in the car because there was no indication in the record that Gant could even see or recognize that police were signaling to him an intent to detain him.

The U.S. Supreme Court subsequently granted the State's petition for certiorari. *Arizona v. Gant*, 538 U.S. 976 (2003). While the case was awaiting argument, this court decided *State v. Dean*, 206 Ariz. 158 (2003), which criticized the decision in *Gant* and rejected the appeals court's analysis. Thereafter, the Supreme Court vacated the court of appeal's decision in *Gant* and remanded for reconsideration in light of *Dean*. *Arizona v. Gant*, 540 U.S. 963 (2003). The appeals court then remanded the case to the superior court for an evidentiary hearing and factual findings on whether the officers' warrantless search of Gant's vehicle violated the Fourth Amendment. Based on the

officers' uncontradicted testimony as to the circumstances of Gant's arrest, as described above, the trial court found that Gant's vehicle had been "searched almost immediately after he was placed in a patrol car," and that Gant "was apparently at most 8-10 feet from the car" when he was arrested. Because the search was conducted "immediately after the arrest," and Gant was in close proximity to his vehicle, the court denied the motion to suppress under the "recent occupancy" test of *Dean*, 206 Ariz. at 166.

Gant appealed and the court of appeals reversed. This court subsequently granted the State's petition for review.

Issue Presented:

Did the court of appeals contravene the United States Supreme Court's decisions in *Thornton v. United States*, 541 U.S. 615 (2004) and *New York v. Belton*, 101 S.Ct. 2860 (1981), and this Court's decision in *State v. Dean*, 206 Ariz. 158 (1983), in holding that a warrantless automobile search incident to the recent occupant's arrest was unconstitutional absent proof of actual danger to the arresting officers and actual risk of destruction of evidence?

This Summary was prepared by the Arizona Supreme Court Staff Attorney's Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.