



**POLICE VEHICLE SEARCHES INCIDENT
TO ARREST: EVALUATING CHIEFS'
KNOWLEDGE OF *ARIZONA V. GANT***

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INTRODUCTION

In 2009, in *Gant v. Arizona*, the United States Supreme Court significantly changed the Fourth Amendment norms governing police searches incident to arrest at vehicles.¹ To date, there is no known empirical study of police knowledge regarding such standards of searches at vehicles. Moreover, previous studies on general law enforcement knowledge of Fourth Amendment rules largely focus on non-ranking or non-supervising officers. This empirical study aims to fill these gaps by shedding light on police supervisor knowledge with respect to searches at vehicles.²

This study finds that police chief knowledge concerning search incident to arrest law at vehicles is rather uneven. In certain areas pertaining to this law, chiefs have moderate to strong knowledge. For example, a majority of chiefs knows that the *Belton* rule, governing searches incident to arrest at vehicles, is no longer the applicable rule for these searches.³ In addition, most chiefs know about the particular legal criteria under *Gant* to apply when deciding to conduct a search incident to arrest at vehicles, such as whether the arrestee would be able to reach inside the passenger compartment of the vehicle to access a weapon.⁴ However, in other areas of search incident to arrest law at vehicles, police chief knowledge appears to be modest to low. For instance, most chiefs do *not* realize that the ability to obtain a warrant is not a factor that must be evaluated in

¹ *Arizona v. Gant*, 129 S. Ct. 1710, 1714–15 (2009). For a full discussion of *Gant*, including its holding, rule and rationale, see *infra* Part I(A).

² See *infra* Part II. See also *infra* notes 49-51, 54 & 57 and accompanying text (discussing previous, more numerous Fourth Amendment studies involving non-supervising or non-ranking police officers, detectives and drug officers). But see *infra* notes 49-50 & 52-53 (explaining previous Fourth Amendment studies examining supervising officer and chief knowledge).

³ See *infra* Part IV and Table 1. For a description of *New York v. Belton*, 453 U.S. 454 (1981), including its holding and rule, see *infra* note 27 and accompanying text.

⁴ See *infra* Part IV and Table 2.

the decision-making process to search a vehicle's passenger compartment incident to arrest.⁵

Our findings suggest certain implications for both the effectiveness of existing deterrents to police misconduct in this area, as well as citizens' trust in law enforcement. The lack of police chief knowledge on certain aspects of Fourth Amendment search incident to arrest law may impair or stymie the efficacy of certain deterrents to police misconduct, such as the exclusionary rule. Moreover, such lack of knowledge may impact residents' confidence in policing, an issue of critical importance to various constituencies, including law enforcement itself. As a result of these findings and their associated implications, this study recommends that police departments consider establishing education and training programs on Fourth Amendment search and seizure norms, particularly the laws concerning searches incident to arrest at vehicles.

The study proceeds as follows. Part I of this study explores in detail the United States Supreme Court case of *Gant v. Arizona*, in addition to the previous landmark Court cases in the search incident to arrest at vehicle context, focusing on *New York v. Belton*.⁶ Part II conducts a literature review of the earlier empirical studies on police knowledge of Fourth Amendment search and seizure law. Part III explains this study's methodology, including descriptions of the survey respondents (i.e., the police chiefs), the survey questions and possible responses, and the study's hypothesis. Part IV discusses the study's findings with respect to chief knowledge of Fourth Amendment search incident to arrest law at vehicles. The summarized findings also appear in three tables at the end of Part IV.

⁵ See *infra* Part IV and Table 2.

⁶ See generally *Gant*, 129 S. Ct. 1710; *Belton*, 453 U.S. 454.

Part V identifies certain conclusions and analyzes the implications that can be drawn from the study's results.

I. JURISPRUDENCE ON SEARCHES INCIDENT TO ARRESTS AT VEHICLES⁷

This Part first addresses the United States Supreme Court case of *Gant v. Arizona*,⁸ the landmark case in the context of a search incident to arrest at a vehicle. This discussion then draws upon the Court's previous landmark cases in the area, particularly *New York v. Belton*.⁹

A. FACTS OF *GANT V. ARIZONA*

In *Gant*, two police officers knocked on the door of a home and asked to speak to the homeowner.¹⁰ The defendant answered the door and explained that the owner was not present at the time but would return later.¹¹ After leaving the home, the two officers conducted a records check and discovered that there was an outstanding warrant for the defendant's arrest for driving with a suspended license.¹² Later that day, the officers returned to the same home where they had spoken with the defendant.¹³ They approached the home again and noticed a man in the back and a woman in a vehicle parked in the front of the home.¹⁴ Upon the arrival of a third officer to the home, this man was arrested for providing a false name,

⁷ Part I, Sections A and B include an excerpt from Christopher Totten, *Arizona v. Gant and its Aftermath: A Doctrinal "Correction" Without the Anticipated Privacy "Gains,"* 46 *Crim. L. Bull.* 1293 (2010), with permission. © 2010 Thomson Reuters. Note that several edits were made to the excerpt for the purpose of clarity/readability.

⁸ *Gant*, 129 S. Ct. 1710.

⁹ *Belton*, 453 U.S. 454.

¹⁰ *Gant*, 129 S. Ct. at 1714.

¹¹ *Id.* 1710, 1714–15.

¹² *Id.* at 1715.

¹³ *Id.*

¹⁴ *Id.*

and the woman was arrested for drug paraphernalia possession. Both of these arrestees were handcuffed and placed in separate patrol cars.¹⁵

After these events transpired, the defendant arrived at the home in his car.¹⁶ The defendant parked his car in the driveway, exited the vehicle, and closed the vehicle door.¹⁷ One of the officers, who at the time was approximately thirty feet away from the defendant, called out to him.¹⁸ The defendant and the officer walked towards each other, meeting approximately ten to twelve feet away from the defendant's car, and the officer proceeded to arrest and handcuff the defendant.¹⁹ The officer called for more backup, and when two backup officers arrived, the defendant was placed, handcuffed, in the backseat of their locked patrol car.²⁰ The officers then searched the defendant's car, finding a bag of cocaine in the backseat within a jacket pocket, as well as a gun.²¹ The defendant was subsequently charged for drug possession and drug paraphernalia possession.²² He moved to exclude the drug evidence by arguing that the search of his vehicle violated his Fourth Amendment rights.²³

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* Officers recognized defendant's car as it approached the driveway, and one Officer named Griffith was able to confirm defendant was the driver of the car by shining a flashlight into the car as defendant drove by. *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

B. U.S. SUPREME COURT'S HOLDING IN *GANT*: NARROWING
BELTON

The Court in *Gant* found that under these factual circumstances, the search by police of the defendant's vehicle was unconstitutional under the Fourth Amendment.²⁴ In reaching its holding, the Court clarified the existing doctrine for searches incident to arrest in the vehicle context.²⁵ Specifically, the Court squarely rejected a majority trend among lower courts that had developed after *Belton*,²⁶ the previous seminal case in this context. Since *Belton*, lower courts had increasingly read *Belton* to "allow a vehicle search [by police of the passenger compartment] incident to the arrest of a recent occupant even if there is no possibility the arrestee could gain access to the vehicle at the time of the search."²⁷ These courts therefore read *Belton*

²⁴ *Id.* at 1723-24. Such a ruling of an unconstitutional search would generally result in the exclusion of the evidence of the drugs found in defendant's vehicle (e.g., absent another applicable exception to the Fourth Amendment warrant requirement rendering the search permissible). The U.S. Supreme Court, in reaching its finding of unconstitutionality, affirmed the decision of the Arizona Supreme Court, holding that the search of defendant's vehicle was unreasonable. *See id.* at 1724. For further description of the Arizona Supreme Court's decision, *see id.* at 1715-16.

²⁵ *See generally Gant*, 129 S. Ct. at 1710.

²⁶ *See generally id.* *See also Belton*, 453 U.S. 454 (1981).

²⁷ *Gant*, 129 S. Ct. at 1718 (emphasis added). According to the Court, "[t]o read *Belton* as authorizing a vehicle search incident to every recent occupant's arrest would thus untether the rule from the justifications underlying the *Chimel* exception [e.g., the search incident to arrest exception to the Fourth Amendment warrant requirement]—a result clearly incompatible with our statement in *Belton* . . ." *Id.* (citing *Chimel v. California*, 395 U.S. 752 (1969)). The Court rejected this broad reading of *Belton* because "in most cases the vehicle's passenger compartment will not be within the arrestee's [actual] reach at the time of the search." *Id.* For example, in most cases the officer will move the recent vehicle occupant to a location outside the reach of the vehicle's passenger compartment, and secure the occupant/ arrestee in this location (i.e., the patrol car) prior to searching the vehicle. The Court in *Gant* believed this broad reading of *Belton* by the lower courts stemmed from Justice Brennan's dissent in *Belton* where he said that that the majority opinion in *Belton* rested on "'the fiction . . . that the interior of the car is always within the immediate control of an arrestee who has recently been in the car.'" *See id.* at 1718 (citing *Belton*, 453 U.S. at 466). Note that the

to signify that police may search the passenger compartment of a vehicle incident to an arrest of a vehicle occupant regardless of the arrestee's lack of closeness or access to that compartment in an individual case.

The Supreme Court in *Gant* rejected the lower courts' interpretative reading of *Belton*, holding that this interpretation was inconsistent with the justifications underlying the traditional rule allowing police to search the suspect's "armspan" or "reaching distance" incident to an arrest.²⁸ As the Court explained in *Chimel v. California*,²⁹ the traditional rule is meant to preserve both officer safety and potential evidence.³⁰ In *Gant*, the Court juxtaposed the

dissent in *Gant* believed that *Belton* itself allowed vehicle searches incident to an arrest of an occupant even if there was no longer any possibility of access to the vehicle by the occupant. *See id.* at 1727 (Alito, J., dissenting). For a further discussion of Justice Alito's dissent in *Gant*, and for the list of justices who joined Alito's dissent, see *infra* note 48. The holding in the U.S. Supreme Court's opinion in *Belton* read as follows: "When a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *Belton*, 453 U.S. at 460-61. Previous to its holding statement, the Court in *Belton* also said:

Our reading of the cases [interpreting the scope of search incident to arrest doctrine in the context of vehicles] suggests the generalization that articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within "the area into which an arrestee might reach in order to grab a weapon or evidentiary item." *Id.* at 460 (citing *Chimel*, 395 U.S. at 763).

²⁸ *Gant*, 129 S. Ct. at 1719.

²⁹ *Chimel*, 395 U.S. at 763.

³⁰ *Gant*, 129 S. Ct. at 1718. For a discussion of the conflict between lower court interpretation of *Belton* and the *Chimel* rule, see also *supra* note 27 and accompanying text. Regarding the permissible scope of a traditional police search incident to a lawful custodial arrest (e.g., outside the vehicle context), the Court in *Chimel* found: "There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control' — construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." *Chimel*, 395 U.S. at 763. This is often referred to as the "armspan," or "wingspan" rule. For discussion of the underlying justifications for traditional search incident to arrest doctrine (e.g., officer safety and evidence preservation), see *id.* at 762-63.

traditional rule with the realities of police-citizen encounters in the context of vehicle searches and arrests.³¹ The Court considered that most vehicle occupants who are arrested by police are not within actual “reaching distance” of their passenger compartment at the time of the vehicle search because they are secured with handcuffs, or in some other way, in the officer’s patrol car.³² Consequently, these occupants are not able to destroy evidence located in the compartment or retrieve a weapon from the compartment capable of causing harm to the officer. As a result of the prevailing, expansive reading of *Belton*, in many cases courts were sanctioning searches by police incident to the arrest of vehicle occupants where the traditional justifications underlying the search were entirely absent.³³

Accordingly, the *Gant* Court held that “police [are authorized] to search a vehicle incident to a recent occupant’s arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search.”³⁴ Theoretically speaking, this holding could have completed the Court’s legal opinion, as the Court had seemingly removed the aforementioned conceptual inconsistency. Nevertheless, the Court continued that “[a]lthough it does not follow from *Chimel*, we also conclude that circumstances unique to the vehicle context justify a search incident to a lawful arrest when it is ‘reasonable to believe that evidence relevant to the crime of arrest might be found in the vehicle.’”³⁵

³¹ *Id.*

³² *Gant*, 129 S. Ct. at 1719.

³³ *Id.*

³⁴ *Gant*, 129 S. Ct. at 1715.

³⁵ *Id.* (citing *Thornton v. U.S.*, 541 U.S. 615, 632 (2004)). The Court proceeded to give examples of when this part of its holding, or rule, would be satisfied. For example, according to the Court, “in many cases, as when a recent occupant is arrested for a traffic violation, there will be no reasonable basis to believe the vehicle contains relevant evidence [e.g., to the crime of arrest].” *Id.* However, in “other[] [cases], including *Belton* and *Thornton*, the offense of arrest will supply a basis for searching

Applying its two-pronged test to the facts of the case, the Court found that the defendant was neither in reaching distance of his vehicle at the time of the police search nor was there a possibility that an officer would find evidence related to the offense for which he was arrested (driving with a suspended license) upon searching the vehicle.³⁶ Concerning the first prong of the *Gant* test—the “safety” prong—the Court ruled that the defendant could not have reached into or accessed the passenger compartment of his vehicle because he, along with the other arrestees at the scene, were outnumbered by police officers.³⁷ In addition, the defendant along with the other arrestees were “handcuffed and secured in separate patrol cars” prior to the search of the defendant’s car.³⁸ In terms of the second prong of *Gant*—the “evidentiary basis” prong—because the defendant was arrested for driving with a suspended license, the

the passenger compartment of an arrestee’s vehicle and any containers therein.” *Id.* Note that in both *Belton* and *Thornton*, the underlying offenses of arrest were drug crimes. *See id.* The second, “evidentiary” prong of *Gant* has its source in a separate opinion in *Thornton* by Justice Scalia. *See Thornton*, 541 U.S. at 632. The majority opinion in *Thornton* held that “*Belton* allows police to search the passenger compartment of a vehicle incident to a lawful custodial arrest of both occupants and recent occupants.” *Id.* at 622. Thus, *Thornton* extended the *Belton* rule to those situations where the officer initiated contact with an arrestee outside but near the arrestee’s vehicle. For a discussion of *Chimel*, see *supra* note 30.

³⁶ *Gant*, 129 S. Ct. at 1719.

³⁷ There were five officers to the three arrestees at the scene. *Gant*, 129 S. Ct. at 1719. Note that while the first part of the *Gant* rule has been termed the ‘safety’ prong, it is possible that an unsecured arrestee within “reaching” distance of the passenger compartment may not only be able to gain access to a weapon in that compartment to use against an officer or other “third” party but also may be able to grab evidence from that area for purposes of destroying or concealing it. Thus, this prong perhaps could be better termed the “emergency” prong because it allows police to search the passenger compartment in an emergency to prevent harm to themselves or third parties from a weapon, and to prevent evidence destruction or concealment. For purposes of this prong of the *Gant* rule, an emergency arises when the arrestee is unsecured and within reaching distance of the passenger compartment (e.g., at the time of the police search).

³⁸ *Id.*

Court concluded that “police could not expect to find evidence in the passenger compartment of [defendant’s] car.”³⁹

In deciding to depart from the broad reading of *Belton*, the Court determined that such a reading failed to respect important Fourth Amendment privacy interests and did not significantly contribute to law enforcement interests.⁴⁰ First, the Court noted that while citizens have less privacy interests in vehicles than in homes, the privacy interest afforded vehicles is nevertheless “important and deserving of constitutional protection.”⁴¹ Second, according to the Court, the broad reading of *Belton* did not provide sufficient guidance or clarity to officers conducting searches of vehicles incident to the arrest of recent occupants.⁴²

³⁹ In sum, the Court stated that “[b]ecause police could not reasonably have believed either that [defendant] Gant could have accessed his car at the time of the search or that evidence of the offense for which he was arrested might have been found therein, the search in this case was unreasonable.” *Id.*

⁴⁰ *Id.* at 1720-21.

⁴¹ Regarding the privacy interests, the Court elaborated:

It is particularly significant that *Belton* searches authorize police officers to search not just the passenger compartment but every purse, briefcase, or other container within that space. A rule that gives police the power to conduct such a search whenever an individual is caught committing a traffic offense [and is arrested for that offense], when there is no basis for believing evidence of the offense might be found in the vehicle, creates a serious and recurring threat to the privacy of countless individuals. Indeed, the character of that threat implicates the central concern underlying the Fourth Amendment—the concern about giving police officers unbridled discretion to rummage at will among a person’s private effects. *Id.*

⁴² The Court said that “at the same time [the State] undervalues these privacy concerns [in vehicles], the State exaggerates the clarity its [broad] reading of *Belton* provides.” *Id.* For example, according to the Supreme Court,

[lower] [c]ourts that have read *Belton* expansively are at odds regarding how close in time [the vehicle search must be] to the arrest and how proximate to the arrestee’s vehicle an officer’s first contact with the arrestee must be to bring the encounter within *Belton*’s purview, and whether a search is reasonable when it commences or continues after the arrestee has been removed from the scene. *Id.* at 1720-21.

The Court also reasoned that the concerns of officer safety and evidence destruction or concealment by vehicle occupants are adequately addressed by the Court's narrower reading of *Belton*, as well as by other exceptions to the Fourth Amendment warrant requirement in the vehicle context.⁴³ Under the Court's holding in *Gant*, officers may still search the passenger compartment of a vehicle incident to an occupant's arrest if the occupant is "within reaching distance of the vehicle or it is reasonable to believe the vehicle contains evidence of the offense of arrest."⁴⁴ In addition, under another exception to the warrant requirement dealing with vehicles, officers may "frisk" or conduct a protective search of the passenger compartment of a vehicle for weapons if they have reasonable suspicion that any current or recent vehicle occupant is dangerous and may gain immediate access to a weapon within the vehicle.⁴⁵ Moreover, under the automobile exception to the warrant requirement, if an officer has probable cause to believe that a vehicle contains contraband, the officer may search *any* part of the vehicle capable of containing this contraband.⁴⁶

Finally, the Court dismissed the dissent's argument that police reliance on an expansive *Belton* rule for twenty-eight years justified maintaining the rule.⁴⁷ In particular, the Court found that the privacy interests possessed by citizens in their vehicles outweighed any law enforcement reliance interest on a broad *Belton* rule:

⁴³ *Id.* at 1721.

⁴⁴ *Id.*

⁴⁵ *Id.* (citing *Michigan v. Long*, 103 S. Ct. 3469 (1983)).

⁴⁶ The Court noted that the automobile exception to the Fourth Amendment under "Ross allows searches for evidence relevant to offenses other than the offense of arrest, and the scope of the search authorized is broader [e.g., it includes areas outside the passenger compartment of the vehicle, including the trunk]." *Gant*, 129 S. Ct. at 1721 (citing *U.S. v. Ross*, 102 S. Ct. 2157 (1982)).

⁴⁷ *Gant*, 129 S. Ct. at 1722-23.

Countless individuals guilty of nothing more serious than a traffic violation have had their constitutional right to the security of their private effects violated as a result [of adherence to a broad reading of *Belton*]. The fact that the law enforcement community may view the [broad reading] of the *Belton* rule as an entitlement does not establish the sort of reliance interest that could outweigh the countervailing interest that all individuals share in having their constitutional rights protected.⁴⁸

II. LITERATURE REVIEW ON OFFICER KNOWLEDGE OF FOURTH AMENDMENT SEARCH AND SEIZURE LAW

Though there are no known, previous studies on officer knowledge regarding searches incident to arrest law under *Gant*, there are a few previous studies aimed, at least in part, at

⁴⁸ *Id.* at 1722-23. The principal dissenting opinion was written by Justice Alito, and joined by Chief Justice Roberts, Justice Kennedy, and Justice Breyer. The majority, unlike the dissent, believed that a broad reading of *Belton* was not required under the principle of stare decisis. The Court said: "We have never relied upon stare decisis to justify the continuance of an unconstitutional police practice." *Id.* at 1722. Also, the majority believed that *Gant* was factually distinguishable from *Belton* (and *Thornton*). In this regard, the Court said:

The safety and evidentiary interests that supported the search in *Belton* simply are not present in this case. Indeed, it is hard to imagine two cases that are factually more distinct, as *Belton* involved one officer confronted by four unsecured arrestees suspected of committing a drug offense and this case involves several officers confronted with a securely detained arrestee apprehended for driving with a suspended license. This case is also distinguishable from *Thornton*, in which the [defendant] was arrested for a drug offense. *Id.*

Justice Breyer wrote a brief, separate dissenting opinion in which he explained that his agreement with the other dissenting judges stemmed from the fact that he did not believe there existed sufficient justification to overrule *Belton*. Breyer joined the principal dissent except for its final section dealing with the other dissenters' argument that *Belton* was not poorly reasoned (and therefore should not be overruled). *See id.* at 1725-26 (Breyer, J., dissenting). Justice Scalia wrote a concurring opinion.

determining officer knowledge concerning Fourth Amendment jurisprudence. Perrin, Caldwell, Chase, and Fagan distributed surveys to mostly police officers and detectives from primarily one county in California containing questions on both the exclusionary rule and officer understanding of Fourth Amendment search and seizure law. For these latter questions, the successful response rate was quite low, around 50%.⁴⁹ In another study, Eugene Hyman determined that “the average officer did not know or understand proper search and seizure rules,” and that “supervisors and senior officers only achieved slightly improved scores.”⁵⁰ A study by Stephen Wasby concluded that “recruit training is sadly lacking in criminal procedure content” and “[t]he spirit and tone of communication about the law, particularly when the law favorable to defendants’ rights, is often negative, with the need for compliance stressed only infrequently.”⁵¹ Finally, in an empirical survey study involving police knowledge on the knock-and-announce rule, the authors of the current study found that most police chiefs understand the operation of the Fourth Amendment knock and announce rule in the contexts of both police searches⁵² and arrests.⁵³

⁴⁹ See L. Timothy Perrin, H. Mitchell Caldwell, Carol A. Chase & Ronald W. Fagan, *If It's Broken, Fix It: Moving Beyond the Exclusionary Rule*, 83 IOWA L. REV. 669, 712-13, 724-25, 735 (1998). Perrin et al. explained that “[c]lose to half of those participating in the study held the rank of officer at the time they responded to the questionnaire, about one-fifth held the rank of detective, and the remainder, about one-third, held a rank above detectives.” *Id.* at 719.

⁵⁰ Eugene Michael Hyman, *In Pursuit of a More Workable Exclusionary Rule: A Police Officer's Perspective*, 10 PAC. L.J. 33, 47 (1979).

⁵¹ Stephen L. Wasby, *Police Training about Criminal Procedure: Infrequent and Inadequate*, 7 POL'Y STUD. J. 461, 464-66 (1978).

⁵² See also Christopher D. Totten & Sutham Cobkit, *The Knock and Announce Rule and Police Searches After Hudson vs. Michigan: Can Alternative Deterrents Effectively Replace Exclusion for Rule Violations?*, 15 NEW CRIM. L. REV. 446 (2012).

⁵³ See Christopher D. Totten & Sutham Cobkit, *The Knock and Announce Rule and Police Arrests: Evaluating Alternative Deterrents to Exclusion for Rule Violations*, 48 U.S.F. L. REV. 71, 99-100 (2013).

Other studies focused on the effectiveness of Fourth Amendment police deterrents. Heffernan and Lovely determined that unintentional mistakes by officers were made in decisions concerning search and seizure law by about one-third of the respondents, while another 15% of officers knowingly made a mistake regarding this law.⁵⁴ Additionally, Orfield conducted two empirical studies that focused on the exclusionary rule, finding that officers: 1) comprehend why evidence has been suppressed in their court cases;⁵⁵ and 2) conduct certain searches more carefully in response to the exclusion of evidence.⁵⁶ Orfield also found that the exclusionary rule helps officers to learn about Fourth Amendment search norms.⁵⁷

⁵⁴ William C. Heffernan & Richard W. Lovely, *Evaluating the Fourth Amendment Exclusionary Rule: The Problem of Police Compliance with the Law*, 24 U. MICH. J. L. REFORM 311, 348 (1991). See also Ronald L. Akers & Lon Lanza-Kaduce, *The Exclusionary Rule: Legal Doctrine and Social Research on Constitutional Norms*, 2 SAM HOUSTON ST. U. CRIM. JUST. CENT. RES. BULL., 1-6 (1986) (survey study of more than 200 officers in two cities found that 19% admitted that they conducted searches of “questionable authenticity” at a minimum of one time per month while 4% stated that they executed searches they knew to be invalid at a minimum of one time each month).

⁵⁵ Myron Orfield, Jr., *The Exclusionary Rule and Deterrence: An Empirical Study of Chicago Narcotics Officers*, 54 U. CHI. L. REV. 1016, 1017-18, 1027-29 [hereinafter, “Police Study”]

⁵⁶ *Id.*

⁵⁷ See *id.* (finding, among other things, that officers understand why evidence has been excluded in individual cases, the exclusion of evidence leads officers to be more careful when conducting warrantless searches, and exclusion fosters the creation of particular programs, including training programs, aimed at increasing police adherence to Fourth Amendment norms); See also Myron Orfield, Jr., *Deterrence, Perjury, and the Heater Factor: An Exclusionary Rule in the Chicago Criminal Courts*, 63 U. COLO. L. REV. 75, 80-82 (1992) (finding that the exclusion of evidence plays a useful role in instructing officers about search laws) [hereinafter, “Courts Study”]. The survey respondents in Orfield’s police study were narcotics officers and detectives. Orfield, *Police Study*, *supra* note 55, at 1024-25. The respondents in Orfield’s courts study were judges, public defenders and prosecutors from 14 felony trial courthouses in one county in Illinois. See Orfield, *Courts Study*, at 81-84. In both his police and courts studies, Orfield interviewed the respondents using a questionnaire.

III. METHODS

A. SAMPLES

To collect data for this study, we sent surveys to police chiefs in 250 large cities that have a population of 100,000 or more. We obtained names and addresses from the 2014 National Directory of Law Enforcement Administrators, and we mailed cover letters and surveys with a return, self-addressed stamped envelope on September 8, 2015, asking the chiefs about their knowledge of search incident to arrest law (i.e., *Belton* and *Gant*). We sent a follow-up survey on Friday, October 16, 2015. Forty-two usable surveys were returned, a response rate of 16.8 percent. (Note: Since not every survey respondent chose to answer every question appearing on the survey, some of the numbers for certain responses noted in this Section may not add up to 42).

With respect to the officers' highest level of education, twenty-eight (73.7%) respondents reported having a master's degree or above, and six (15.8%) stated that they possessed a bachelor's degree. The remaining four respondents (10.5%) reported having attained either an associate's degree or "some college." Concerning the length of service in law enforcement, six (15.8%) respondents represented being in law enforcement for less than 25 years while the remaining thirty-two respondents (84.2%) had been in law enforcement for more than 25 years. Finally, thirty-two (82.1%) respondents indicated that their police department provided a training program or workshop on the legality of vehicle searches and arrests in the past 12 months. Twenty-three respondents (74.2%) reported that most training programs were less than five hours in length.

In terms of how many vehicle searches incident to arrest were performed by the respondents' police departments in the previous year, the average number of searches was 314. Regarding how many arrests were accomplished by respondents' departments over the preceding year, the average number of arrests was 21,528. About 4,119 (19.1%) of these arrests were arrests of current or recent vehicle occupants.

B. SAMPLE INSTRUMENT

The data collected for this study derived from a survey instrument that we distributed in 2015 on police knowledge regarding search incident to arrest law at vehicles, primarily focused on the holdings from *Belton* and *Gant*. Our survey contained five main questions on police knowledge in this area. The respondents were asked: (1) whether an officer who makes a lawful arrest of a vehicle occupant or recent occupant may proceed to search the vehicle's passenger compartment and any open or closed containers in that part of the vehicle incident to the arrest (*Belton* rule); (2) whether an officer who makes a lawful arrest of a vehicle occupant or recent occupant, *cannot* proceed to search the vehicle's passenger compartment and any open or closed containers in that part of the vehicle incident to the arrest, except for a "safety" scenario (*Gant* rule, safety prong);⁵⁸ (3) whether an officer who makes a lawful arrest of a vehicle occupant or recent occupant, *cannot* proceed to search the vehicle's passenger compartment and any open or closed containers in that part of the vehicle incident to the arrest, except for an "evidence-gathering" scenario (*Gant* rule, evidence prong);⁵⁹ (4) whether officers should consider specific criteria, or factors, before they search the vehicle's passenger compartment incident to a lawful arrest of a vehicle occupant or recent occupant; and (5) whether they had heard of the *Gant* case, or rule. As to question four, the five listed criteria or factors were: (A) vehicle description; (B) identity of suspect; (C) whether police can obtain a search warrant; (D) occupant's/arrestee's ability to reach inside the vehicle's passenger

⁵⁸ The survey defined the safety prong as a "scenario where the occupant/ arrestee is unsecured and within reaching distance of the passenger compartment."

⁵⁹ The survey defined the evidence prong as a "scenario where the officer has a reasonable belief that evidence relevant to the crime of arrest may be found in the vehicle."

compartment to grab a weapon; and (E) the officer's reasonable belief that evidence relevant to the crime of arrest may be found inside the vehicle.

For questions one, two, and three above, which appear in Table 1, the possible scores ranged from 1 to 4, with a higher number indicating stronger agreement. For question four, which appears in Table 2, respondents could indicate their agreement with a particular factor or criterion by inserting a check mark next to that criterion. For question number 5, which appears in Table 3, respondents could simply answer "yes" or "no."

In addition to the above questions, our survey also invited the respondents to specify other factors or criteria that they believed officers should consider before searching the passenger compartment incident to a lawful arrest of a current or recent vehicle occupant.

Based on the few existing empirical studies regarding police knowledge of Fourth Amendment search and seizure law in areas *apart from* search incident to arrest law under *Gant*,⁶⁰ it was hypothesized that chief knowledge of this law would be modest to low.

IV. FINDINGS

Based on the data obtained from our survey (see Tables 1 through 3 following this section), the majority of chiefs (62%) have knowledge that the *Belton* rule is no longer the applicable law for vehicle searches incident to arrest. Concerning the evidence prong of *Gant*, the majority of chiefs possess knowledge of that prong. In particular, a majority (51%) of chiefs know that the evidence prong is the correct, current law for vehicles searches incident to arrest. More

⁶⁰ For a description of these studies, see *supra* notes 49-57 and accompanying text.

specifically, an overwhelming number of chiefs (92.9%) know that they should consider whether they possess a reasonable belief that evidence related to the crime of arrest is in the vehicle before searching the passenger compartment incident to arrest. Regarding the *Gant* safety prong, the majority of chiefs (55%) *lack* knowledge that this prong is the relevant law for vehicles searches incident to arrest, while an overwhelming number of chiefs (95.2%) know that they must consider whether the arrestee can reach inside the passenger compartment to grab a weapon before searching the passenger compartment incident to arrest. Most chiefs (88.1%) indicate that they had heard of the *Gant* case or rule, and most report to know that vehicle description (81%) and suspect identity (76.2%) are *not* factors that must be considered before deciding whether to search the vehicle passenger compartment incident to arrest. However, most chiefs (59.5%) do *not* know that obtaining a warrant is not a factor that must be considered as part of the decision to search the passenger compartment incident to arrest.⁶¹

Using this data, we ran various “T-test” analyses to determine if there are significant relationships between respondents’ knowledge on *Gant* (i.e., Table 1 Questions), and their respective educational level, training, or years in law enforcement. In testing a correlation between respondents’ educational level and respective knowledge on *Gant*, we found that there was no statistically significant difference between the two variables. That is, knowledge on *Gant*

⁶¹ In addition, several respondents (19) “wrote in” other factors, or criteria, that they believed officers should consider before they search the vehicle’s passenger compartment incident to a lawful arrest of a vehicle occupant or recent occupant. None of these factors appeared with much frequency. The responses in their order of frequency are: (A) Impoundment-inventory search (6 respondents); (B) Probable cause of an unrelated crime (3 respondents); (C) Valid consent (2 respondents); and (D) Other (2 respondents). The “Other” category included the following two responses: (1) area under span of control and (2) totality of circumstances.

cannot be predicted on the basis of respondents' educational level. With respect to respondents' participation in a training program on the legality of vehicle search and respondents' respective knowledge on *Gant*, again, there was no statistically significant difference between the two variables. Knowledge on *Gant* cannot be predicted by whether a chief had been trained on the legality of vehicle searches. Regarding respondents' length of service in law enforcement and respondents' corresponding knowledge on *Gant*, the findings were similar: there was no statistically significant difference between the two variables. That is, knowledge on *Gant* cannot be predicted by a chief's length of service in law enforcement.

Table 1. Respondents' Knowledge of Search Incident to Arrest Law for Vehicles (N = 42)

Question	Strongly Agree or Agree	Strongly Disagree or Disagree	Mean Score
When an officer makes a lawful arrest of a vehicle occupant or recent occupant, the officer may then proceed to search the vehicle's passenger compartment and any open or closed containers in that part of the vehicle incident to the arrest.	16 (38.0%)	26 (62.0%)	2.21
When an officer makes a lawful arrest of a vehicle occupant or recent occupant, the officer cannot proceed to search the vehicle's passenger compartment and any open or closed containers in that part of the vehicle incident to the arrest, except for a "safety" scenario.	19 (45.0%)	23 (55.0%)	2.55
When an officer makes a lawful arrest of a vehicle occupant or recent occupant, the officer cannot proceed to search the vehicle's passenger compartment and any open or closed containers in that part of the vehicle incident to the arrest, except for an "evidence-gathering" scenario.	21 (51.2%)	20 (48.8%)	2.56

Note: Scores ranged from 1 to 4, with 1 meaning strongly disagree and 4 meaning strongly agree.

Table 2. Respondents' responses on criteria or factors that officers should consider before searching the vehicle's passenger compartment based on, or incident to, a lawful arrest of a vehicle occupant or recent occupant (N = 42)

Criteria/Factors	Yes	No
Occupant's/arrestee's ability to reach inside vehicle's passenger compartment (for example, to grab a weapon)	40 (95.2%)	2 (4.8%)
Reasonable belief that evidence relevant to the crime of arrest may be found in vehicle	39 (92.9%)	3 (7.1%)
Obtaining a search warrant	25 (59.5%)	17 (40.5%)
Identity of suspect (name, race/ethnicity, age, gender, etc.)	10 (23.8%)	32 (76.2%)
Vehicle description (make, model, color, plate number, etc.)	8 (19.0%)	34 (81.0%)

Note: Eleven respondents also mentioned other criteria, including (1) area under span of control; (2) if occupant is no longer inside his ability to obtain weapon or conceal drugs is diminished. However, inventory search could be conducted; (3) if vehicle will be impounded-inventory search; (4) inventory prior to towing vehicle; (5) in WA state, we must have consent or a search warrant; (6) P/C of a crime; (7) probable cause/mobility, valid consent, impoundment by policy (ownership and standing may be considerations; (8) probable cause of unrelated crime; and (9) totality of the circumstances.

Table 3. Respondents' Knowledge of the *Gant* case or *Gant* rule (N=42)

Question	Yes	No
Have you heard of the <i>Gant</i> case or <i>Gant</i> rule?	37 (88.1%)	5 (11.9%)

V. ANALYSIS

Overall, police chief knowledge about search incident to arrest law at vehicles is uneven. In some areas of the law, chiefs have moderate to strong knowledge. A majority of chiefs (62%) know that the *Belton* rule is no longer the applicable rule for searches incident to arrest at vehicles, and most chiefs have generally heard of the *Gant*

case, or rule. Most chiefs know about the specific legal criteria under *Gant* to apply (or ignore) when searching incident to arrest at vehicles, and the vast majority of chiefs (92.9%) know that they should consider whether they possess a reasonable belief that evidence related to the crime of arrest is inside the vehicle before searching the passenger compartment of a vehicle incident to arrest. An even greater number of chiefs (95.2%) know that whether the arrestee is able to reach inside the passenger compartment to grab a weapon is a factor to consider before searching the compartment incident to arrest. Finally, most chiefs know that vehicle description and suspect identity are *not* criteria that must be evaluated in order to search a vehicle passenger compartment incident to arrest.

In other areas of law, chief knowledge appears to be modest or low. For example, regarding the *Gant* "safety" prong, most chiefs (55%) appear to lack knowledge that this prong is the correct, current law for vehicle searches incident to arrest (conversely, though, many chiefs know of the key "safety" criterion of whether the arrestee can reach inside the passenger compartment to grab a weapon). In addition, only about half of the chiefs (51%) appear to possess knowledge that the *Gant* evidence prong is the current law for vehicles searches incident to arrest (though, again, many chiefs know of the key "evidence" criterion to consider of whether they possess a reasonable belief that evidence related to the crime of arrest is in the vehicle). Finally, most chiefs do not know that seeking a warrant is not a criterion that must be weighed in the decision to search the passenger compartment incident to arrest.

The discrepancy between weaker chief knowledge on the correct articulation of particular legal rules and stronger chief knowledge of the relevant criterion to consider under those rules can perhaps be explained in several ways. First, it may be that the technical rules or "prongs," when articulated or stated in the abstract, are less familiar to those not trained in the law. A more concrete list of criteria to consider when a given factual scenario unfolds in the field (here, when to search a vehicle's passenger compartment based on an occupant's arrest) may be more accessible to police officers with no

legal background. Second, an individual without formal legal training may conflate many related laws and weigh external facts or issues outside the scope of the rule statement. This may lead to an inaccurate response to the survey question about that very rule statement. Chiefs may have factored into their responses considerations external to the specific law on point and arrived at an incorrect response. Regardless of the exact reason for the discrepancies, the stronger chief knowledge on the key criteria to consider under the *Gant* prongs seems to exhibit that chiefs do, in fact, possess a sound understanding of the *application* of search incident to arrest law under *Gant* in the field.

In certain areas of law, this study's results align with many of the previous studies, which found modest to low levels of Fourth Amendment knowledge among law enforcement officials.⁶² This may be because certain chiefs have not conducted "in-the-field" searches of vehicles incident to arrest for some time and instead have more recent experience in the administrative operations of their department (for example, budgetary and personnel issues). Lower knowledge in this context may also be a result of more pervasive issues, such as inefficient police training or education.

Nonetheless, in other areas, this study's findings diverge from the majority trend of previous studies.⁶³ That is, chiefs in the current study appear to understand particular norms and issues related to Fourth Amendment search law at vehicles. This may be because chiefs tend to have more years of education and police experience and in turn, more opportunities for both formal and informal

⁶² For a description of these studies, see *supra* notes 49-51 & 54 and accompanying text.

⁶³ For a description of these studies (i.e., studies finding low to modest levels of police knowledge regarding Fourth Amendment rules), see *supra* notes 49-51 & 54 and accompanying text. But for a description of a few earlier studies finding moderate to strong chief knowledge concerning Fourth Amendment search and seizure law, see *supra* notes 52-53 & 57.

training, compared to non-supervising or non-ranking officers, who were the principal respondents in the previous studies.⁶⁴ It also may be because chiefs have more resources at their disposal with which to identify the correct responses. For example, they may have been able to contact a prosecutor or legal advisor to obtain information regarding the proper Fourth Amendment rules for vehicle searches incident to arrest in completing this study.

A. IMPLICATIONS

One worrisome implication of the limited chief knowledge in certain areas of Fourth Amendment law is its connection to the deterrence issue. One of the principal reasons that federal courts – and the United States Supreme Court, in particular – have attached certain consequences to police misconduct in the Fourth Amendment arena has to do with those consequences' perceived ability to deter police misdeeds. For example, the Court has applied the exclusionary rule consequence, when the Court believes that the penalty can deter police from committing the same or similar errors in the future. The Court has, accordingly, refused to apply the penalty when it perceives the deterrence benefits to be minimal or low.⁶⁵ The Court

⁶⁴ See *supra* notes 49-51 & 54-57 and accompanying text (discussing previous, more numerous Fourth Amendment studies involving non-supervising or non-ranking police officers, detectives and drug officers). *But see supra* notes 49-50 & 52-53 (explaining previous Fourth Amendment studies examining supervising officer and chief knowledge).

⁶⁵ For the original deterrence rationale underlying the exclusionary rule, see *Mapp v. Ohio*, 367 U.S. 643, 656 (1961) (citing *Elkins v. United States*, 364 U.S. 206, 217 (1960)). *But see Hudson v. Michigan*, 126 S. Ct. 2159, 2165-67 (2006) (refusing to apply the exclusionary rule to knock and announce violations, in part, because the deterrence benefits of applying the rule were determined to be minimal and the costs of applying the rule high). See also *I.N.S. v Lopez-Mendoza*, 468 U.S. 1032, 1045 (1982) (refusing to apply exclusionary rule in civil deportation context, in part, because the federal immigration agency overseeing deportations has its own internal, disciplinary sanctions for official immigration employee misconduct) (internal citation omitted);

has also relied upon the notion that other non-exclusion factors have the ability to deter police misconduct related to Fourth Amendment search and seizure, including police training and education, internal discipline, civil lawsuits and citizen review boards.⁶⁶

However, it may be difficult to deter police misconduct when officers themselves lack knowledge of the law underlying that conduct.⁶⁷ That approximately half of the police chiefs in the survey lack knowledge about the basic rules under *Gant* about searching vehicles incident to arrest (i.e., the safety and evidence prongs) presents certain challenges to deterring any potential police wrongdoing related to these rules. It may be quite difficult to prevent or deter future misconduct in this context by excluding wrongfully obtained evidence, when police simply do not know the correct rules to follow. In such a scenario, further misconduct is likely to ensue, notwithstanding the judicial application of the exclusionary rule to evidence seized as a result of an officer's improper search of a vehicle incident to arrest. In addition, in many cases, officers do not ever learn whether evidence was excluded as a result of their search-related conduct, thereby limiting any educational impact or potential of the exclusionary rule.⁶⁸ In the cases where officers do learn of the

Pa. Bd. Prob. v. Scott, 524 U.S. 357, 368-69 (1998) (declining to apply exclusionary rule to parole revocation proceedings, in part, because parole officers face additional training, internal discipline, and civil suits for alleged illegal searches and seizures).

⁶⁶ See *Hudson*, 126 S. Ct. at 2167-68.

⁶⁷ See Perrin et al., *supra* note 49, at 734-36 (finding that the exclusionary rule is unsuccessful in deterring police misconduct due, in part, to poor officer understanding regarding search and seizure laws, even *after* evidence was excluded in the officer's case). *But see* Orfield, *supra* note 55, at 1046-48 (exclusion of evidence in individual officer cases leads to officer receiving various forms of punishment for his or her search-related misconduct that led to exclusion in first place). *See also supra* note 57.

⁶⁸ See *infra* note 80. *See also* *Bivens v. Six Unknown Named Agents Fed. Bureau Narcotics*, 403 U.S. 388, 417 (1971) (Burger, W., dissenting) ("Whatever educational effect the [exclusionary] rule conceivably might have in theory is greatly diminished

exclusion of evidence, they may not be informed as to why the evidence was excluded (i.e., their misunderstanding of search and seizure law).⁶⁹

For this reason, encouraging, or even perhaps requiring, judges, prosecutors and others to inform police about *why* evidence was excluded may help increase police knowledge in this Fourth Amendment search area and, in the process, heighten the deterrent effect of the exclusionary rule.⁷⁰ Police officers who know the relevant search rules – whether as a result of this targeted instruction or other training and educational sessions – may be more likely to follow the rules if they also know that key, prosecutorial evidence in

in fact by the realities of law enforcement work. Policemen do not have the time, inclination or training to read and grasp the nuances of the appellate opinions that ultimately define the standards of conduct they are to follow. The issues that these decisions resolve often admit of neither easy nor obvious answers, as sharply divided courts on what is or is not 'reasonable' demonstrate. Nor can judges, in all candor, forget that opinions sometimes lack helpful clarity. The presumed educational effect of judicial opinions is also reduced by the long time lapse – often several years – between the original police action and its final judicial evaluation. Given a policeman's pressing responsibilities, it would be surprising if he ever becomes aware of the final result after such a delay." *But see supra* note 57 & *infra* note 69. *See also supra* note 68.⁶⁹ *See Perrin et al., supra* note 49, at 734 (finding that the exclusionary rule is unsuccessful in deterring police misconduct due, in part, to officers failing to learn that evidence had been barred from court in individual cases). *But see Orfield, supra* note 55, at 1017-18 (finding, among other things, that officers understand why evidence has been excluded from court in cases they "work" and that this knowledge led them to change their behavior regarding the application of certain Fourth Amendment procedures). *See also Orfield, Courts Study, supra* note 57, at 80-82 (finding that the suppression of evidence plays a beneficial role in instructing officers about search laws, and that officers alter their conduct in response to suppression).

⁷⁰ Such a recommendation can be applied in other deterrence contexts such as civil lawsuits against police departments or against the cities and towns where the departments are located. It could also be applied in lawsuits against the officers themselves or to internal review proceedings of a disciplinary nature. *See also Perrin et al., supra* note 49, at 734 (recommending additional educational and training seminars for police in search and seizure laws).

their cases can be excluded for disobeying the law.⁷¹ Officers also may be more likely to follow search rules, including search incident to arrest rules, if other consequences or penalties can apply, such as internal police discipline or civil suits.⁷² Crucially, in order for any of these penalties to have full effect, officers first must know the underlying search and seizure laws that regulate their conduct.

This study's findings have implications for citizen confidence in law enforcement and suggest possibilities for increasing this confidence. If police officers possess flawed knowledge regarding the proper norms to apply when searching vehicles incident to arrest, they may perform illicit searches. When citizens learn of such police misconduct, overall confidence in the police may decline. This decline may occur regardless of whether a formal sanction or penalty is applied to the improper conduct. Of course, for those searches that implicate errors beyond technical search incident to arrest violations and that consist of more obviously egregious police conduct (e.g., improper use of force, unreasonable property destruction), such searches will only further engender citizen distrust. Citizen confidence in law enforcement is vital to effective police detection, investigation and prevention of crime. Police must often rely on

⁷¹ See Totten & Cobkit, *supra* note 53, at 105 (a majority of police chiefs perceive that evidence suppression is useful in deterring police misconduct during arrests involving knock-and-announce procedures). Note that the study also found that most chiefs perceive that training, education and internal discipline play a "helpful" role in deterring this officer misconduct. *Id.* at 101. See also Totten, & Cobkit, *supra* note 52, at 448 (a majority of police chiefs perceives that evidence suppression is "helpful" in deterring police misconduct during searches involving knock-and-announce procedures). The study also found that most police chiefs perceive education, training and internal police discipline as "helpful" in deterring police misconduct during searches involving the knock and announce rule. *Id.* at 447.

⁷² See *supra* note 71.

citizen tips, for example, to learn about recently committed crimes in the communities they serve.⁷³

B. RECOMMENDATIONS

In response to this study's findings and their implications for the deterrence issue and citizen trust in law enforcement, police departments may want to consider requiring that their officers, including ranking officers, attend additional training workshops and continuing education programs that specifically address the proper norms surrounding police searches incident to arrest, including at vehicles. Increasing police familiarity with the norms governing police conduct in this area may foster a police culture of greater compliance and respect for the law. In turn, such a development may inspire trust among citizens towards police officers and facilitate more productive interactions between the community and law enforcement that enhance public safety.

CONCLUSION

Chief knowledge regarding search incident to arrest law at vehicles is not equally balanced. In some areas of search incident to arrest law at vehicles, chiefs have moderate to strong knowledge, but in other areas chief knowledge is low. Thus, the latter results share certain similarities with earlier studies' findings of police knowledge in this area. At the same time, however, this study fills a gap necessary to understand police knowledge in the context of searches incident to arrest at vehicles, particularly in the wake of the landmark

⁷³ See *Illinois v. Gates*, 462 U.S. 213, 237-38 (1983) ("Yet such [anonymous citizen] tips, particularly when supplemented by independent police investigation, frequently contribute to the solution of otherwise 'perfect crimes'"). See also *McCray v. Illinois*, 386 U.S. 300, 306-07 (1967) ("[W]e accept the premise that the informer is a vital part of society's defensive arsenal.").

Gant case. The study also enhances understanding of police supervisor knowledge of search and seizure norms. A future study on patrol or line officer knowledge of search incident to arrest norms at vehicles may shed additional light on this underexplored area.

This study's results reflecting low to moderate chief knowledge of search incident to arrest norms at vehicles bear certain implications for existing deterrents to police misconduct, as well as for citizen confidence in law enforcement. As a result of these implications, this study recommends that police increase education and training programs on Fourth Amendment search and seizure norms, in particular in the search incident to arrest at vehicles context.