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United States Supreme Court

**VEHICLE SEARCH INCIDENT TO ARREST:
Police must have reason to believe evidence will
be found or that officer safety is at risk. Arizona
v. Gant, Case No. 07-542 (April 21, 2009)**

Gant was present at a residence being investigated by the police after receiving an anonymous tip that the residence was being used to sell drugs. Gant answered the door and told the police that the owner was not there but would be back later. The officers left the residence and ran a records check on Gant, found that he had an outstanding warrant for his arrest for driving with a suspended license. The officers returned later, finding a man near the back of the house, and a woman in a car parked in front. The man was arrested for providing a false name, and the woman was arrested for possessing drug paraphernalia. Both were handcuffed and secured in police cars when Gant arrived. Gant parked at the end of the driveway, got out of the car and shut the door. An officer immediately arrested Gant and handcuffed him. When another police car arrived, Gant was locked in the vehicle. Two officers searched his car finding a gun, and a bag of cocaine.

Gant was charged with possession of the cocaine and he moved to suppress the evidence. The trial court found that the search was incident to his arrest. The Arizona Supreme Court held that the search was unreasonable within the meaning of the Fourth Amendment. The state appealed.

The Supreme Court held that police may search the passenger compartment of a vehicle incident to a

recent occupant's arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest.

Chimel v. California, 395 U.S. 752 (1969), requires that a search incident to arrest be justified either by officer safety or preservation of evidence. The Supreme Court applied Chimel in the automobile context in New York v. Belton, 453 U.S. 454 (1981), holding that when an officer lawfully arrests the occupants of a car, he may contemporaneously search the passenger compartment and any containers therein. Belton has been interpreted broadly to allow officers to search all vehicles when making an arrest regardless of a reason to believe any evidence will be found or that officer safety is at risk.

The Supreme Court narrowly read Belton, allowing a vehicle search incident to an arrest only “when the arrestee 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.”

The Court was concerned about “police entitlement” to search cars regardless of the important privacy interest people have in their cars.

Gant, who was arrested for a traffic violation and secured in the back of a police car when the search took place, was no threat, and there was no reason to believe evidence of his traffic violation would be found in his car.

This case opens the door for more aggressive pre-trial suppression litigation.



Georgia Supreme
Court

SENTENCING: Life for second sex offender registration violation cruel and unusual. Bradshaw v. State, Case No. S08A1057 (November 25, 2008). Bradshaw, a convicted sex offender, was convicted after a bench trial for having failed to timely report his new address. Since this was his second registration violation, a mandatory sentence of life imprisonment was imposed under O.C.G.A. §42-1-12(n).

He had moved to dismiss the indictment on the ground that this punishment was a violation of the Eighth Amendment as cruel and unusual punishment. The Supreme Court, in a split decision, holds that the trial court should have granted the motion, vacates the sentence, and remands for the trial court to resentence him. (The Court does not say what sentences are now available to the trial court; it notes that a first registration violation is now punishable by imprisonment for ten to thirty years.) “[T]he imposition of a sentence of life imprisonment is so harsh in comparison to the crime for which it was imposed that it is unconstitutional.”

The Court reviews U.S. Supreme Court Eighth Amendment precedent under which a sentence is analyzed to see if it is “grossly disproportionate” to the crime and discusses its notable decision last year in Humphrey v. Wilson, 282 Ga. 520 (2007).

The Court then discusses the harm caused by the crime, noting that it is a non-violent one, and that Bradshaw had served only about five years for the statutory rape he committed which was the underlying offense requiring his registration.

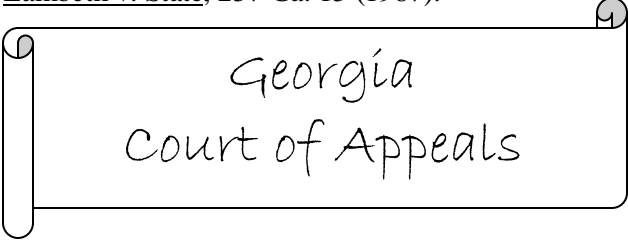
The Court rejects the State’s argument that it should take into consideration that Bradshaw would be eligible for parole in seven years; parole is uncertain and entirely discretionary with the Parole Board. Rummell v. Estelle, 445 U.S. 262 (1980); Daker v. Ray, 275 Ga. 205 (2002).

The Court compares this sentence with sentences for other crimes in Georgia. Life sentences are otherwise provided for “only in a narrow set of circumstances” and where the crimes “are violent, more disruptive of society, and require manifestly more culpability of a defendant than the failure of a

registered sex offender to make authorities aware of a recent change of address.” For other serious crimes, much lesser sentences may be imposed; for example, one year for such things as voluntary manslaughter, aggravated battery, and aggravated assault with intent to murder, rape, or rob.

The Court also compares Georgia’s statute with those of the rest of the states. No other state imposes a life sentence for a second registration violation. Only about half the states even have a statute providing for punishment for similar registration failures. Most states have punishments under Georgia’s, and mostly, significantly under ten years. “Georgia’s mandatory punishment of life imprisonment is the clear outlier, providing the harshest penalty and providing no sentencing discretion.

The Court notes that the Georgia Constitution provides a more extensive protection against cruel and unusual punishment, but doesn’t need to go there since it is deciding the case under the U.S. Constitution. Kennedy v. Louisiana, Case No. 07-343 (2008); Harmelin v. Michigan, 501 U.S. 957 (1991); Solem v. Helm, 463 U.S. 277 (1983); Lambeth v. State, 257 Ga. 15 (1987).



Georgia
Court of Appeals

INSUFFICIENT EVIDENCE: Possession with intent to distribute. Hicks v. State, Case No. A08A1030 (October 6, 2008). Hicks was convicted of possession of cocaine with intent to distribute. The Court of Appeals reverses, finding that there was insufficient evidence as to his intent to distribute, and remands for the trial court to enter a conviction and sentence on the lesser offense of simple possession.

Hicks was stopped at a roadblock, and a pill bottle was found under the front passenger seat; the bottle contained broken up pieces of what looked like (and turned out to be) cocaine. Hicks ran, but was caught.

At trial, Hicks’ girlfriend (who’d been in the car with him) testified that when he saw the roadblock, he’d nervously dug the pill bottle out of his pocket and handed it to her, and she dropped it. The

investigator who arrested Hicks testified that a pill bottle is easy for a drug dealer to toss out a window, and that users buy pieces of broken up crack cocaine.

That was not enough to prove intent to distribute. There was no evidence of, for example, packaging materials, cutting implements, scales, or a large amount of cash; nor was there evidence that Hicks had prior convictions for possession with intent; nor was there evidence that he had been seen selling drugs; nor was there expert testimony that the amount of drugs in the pill bottle was inconsistent with personal use. “Indeed, the state presented no evidence whatsoever as to the amount of crack cocaine seized . . . Storing drugs in a pill bottle for quick disposal, and possessing an unidentified number of sales-size pieces of the drug, without more, equally supports the hypothesis that the person . . . was a user rather than a dealer.” O.C.G.A. §24-4-6; Florence v. State, 282 Ga. App. 31 (2006); Ryan v. State, 277 Ga. App. 490 (2006); Bethea v. State, 220 Ga. App. 800 (1996); Anderson v. State, 215 Ga. App. 426 (1994).

INSUFFICIENT EVIDENCE: Robbery, false imprisonment. BURDEN OF PROOF: Beyond a 2/3 probability. Shearin v. State, Case No. A08A1518 (October 2, 2008). Four guys – Kellom, Shearin, Caruthers, and Dellemar – were indicted and tried as parties to the crimes of kidnapping with bodily injury, riot in a penal institution, robbery, and escape. Kellom pled guilty to everything.

At the start of their trial, Shearin, Caruthers, and Dellemar each pled guilty to escape. At the end of the trial, the jury acquitted them of the penal riot count and of the kidnapping count. They were convicted of the lesser offense of false imprisonment and of robbery.

The only significant evidence was the testimony of Knight, the night jailer at the Wilcox County jail. He testified that on the night in question there were about 30 inmates in the jail, and all had access to the common area. The entrance to that area from the office was through a steel door and then a barred door. Knight heard noise in the common area, and opened the steel door to look through the barred door. He said Kellom reached through the barred door and grabbed him by the shirt. Two other inmates came up and grabbed him by the belt and joined in the attack, injuring him. They got the keys

out of the steel door, unlocked the barred door, dragged Knight into the jail area, and took his truck keys from his pocket, and fled after closing and locking the barred door, and after rummaging through boxes in the office containing inmates’ street clothes.

Knight was unable to say which two of the three inmates who escaped – Shearin, Caruthers, and Dellemar – had participated in the attack on him.

The Court of Appeals reverses the convictions of all three, finding that the evidence did not exclude the “reasonable hypothesis that one of the three appellants merely seized the opportunity to flee from the jail, thus committing the offense of escape, for which each appellant has pled guilty.”

There was evidence that Caruthers knew that Knight had his truck keys in his pocket, and that he knew where inmates’ street clothes were stored. “But even if Caruthers had special information concerning the location of Knight’s keys and the system for storing the inmates’ clothes, there was no evidence that Caruthers was the only inmate with such information.

“[T]he only evidence connecting appellants to the crimes committed against Knight was that they escaped at the time of the attack. Obviously, their escape creates a ‘strong suspicion’ that two of the three appellants might have been the two malefactors who took part with Kellom in the attack . . . But ‘mere suspicion [and mere presence] is insufficient to support a conviction . . . The state has presented evidence that two inmates (and Kellom) attacked Knight; but the state has not presented evidence that would allow a jury to determine which two of the three appellants were Knight’s attackers; nor has it presented any evidence that . . . any of the appellants [were parties to the crime].” O.C.G.A. §24-4-6; In the Interest of C.L., 289 Ga. App. 377 (2008); Crumpton v. State, 240 Ga. App. 422 (1999); Fitz v. State, 201 Ga. App. 83 (1991). The Court says, citing Mealor v. State, 134 Ga. App. 564 (1975), “Our criminal jurisprudence has not endorsed the doctrine of guilt by association.

INSUFFICIENT EVIDENCE: Mere spatial proximity to guy with cocaine. Swicord v. State, Case No. A08A2064 (September 15, 2008). The Court of Appeals reverses Swicord’s conviction for trafficking in cocaine.

The police had been watching a guy named Arline, and were waiting for a search warrant for his apartment when they saw him engage in what appeared to be a drug transaction with three people in a Buick. The police took no action at that time, and the Buick drove off. It was spotted later and a check with dispatch revealed that it was unregistered and uninsured. It was followed into a Burger King parking lot and Swicord, the driver, got out. Swicord was arrested for the registration and insurance crimes. Two other men, Williams and Simmons, were in the car, and when marijuana was found between the driver's seat and the passenger's seat, those two were also arrested.

They were all taken to jail, and when the patrol car which was used to transport Simmons (by himself) was checked, 80 grams of cocaine was found in a bag wedged into the back seat.

The Court finds that there was insufficient evidence on which to convict Swicord: the circumstantial evidence did not exclude hypotheses of innocence.

The Buick belonged to Williams's grandma; it was possible that someone else was driving when the apparent drug deal with Arline went down; since Arline was not secured right after the apparent drug deal, and because he was not watched continuously from then until his later arrest, it was possible that the cocaine he had on him when he was arrested was not what he'd gotten from the people in the Buick; no evidence was presented matching the cocaine found on Arline with the cocaine found in the patrol car.

The inference derived from Swicord's mere association and spatial proximity to Simmons in the Buick were "not strong enough to prove [Swicord's] guilt beyond a reasonable doubt of trafficking in cocaine." O.C.G.A. §24-4-6; Hodges v. State, 277 Ga. App. 174 (2006).

INSUFFICIENT EVIDENCE: Conspiracy, no agreement to manufacture drugs. EVIDENCE: Results of related case inadmissible to prove fact in instant case. Honeycutt v. State, Case No. A08A1213 (September 19, 2008). Honeycutt was convicted of trafficking in methamphetamine and conspiring to manufacture it. The Court of Appeals reverses the conspiracy conviction.

Honeycutt had jumped bail, and his girlfriend, Reina, came to the house he was staying in. There

were several people there. She smelled a meth lab, and knew that Honeycutt was involved in its operation. They got into a violent argument, and she threatened to call the cops. He left the house with a dog and his gun. An officer spotted him behind a convenience store – he had a black eye and scratches, and he was dirty and disoriented. He was arrested for carrying a concealed weapon. A few days later, Reina led bounty hunters to the house with the meth lab.

The indictment alleged that Honeycutt had conspired with Reina to manufacture meth and that the overt act establishing the conspiracy was the same as its object – manufacturing the drug. Reina, however, testified that she had never helped anyone make meth, and had not seen anyone making it, and no other witness testified that she was involved in making meth.

The Court says that the fact that Reina was convicted for manufacturing meth "in a related proceeding arising from the same facts cannot be taken as evidence of that fact for purposes of this case." The Court cites Cobb v. Garner, 158 Ga. App. 110 (1981) in which it was held that a guilty plea is inadmissible to prove facts at issue in the case-in-chief. The Court says that the evidence as to a similar transaction involving Honeycutt, and evidence that Reina and Honeycutt had used meth together, had been together at a meth lab before, and that he had written a letter to her asking her to keep silent did not show that she and Honeycutt had "reached any *agreement* to manufacture the drug at this place and time." Pruitt, 264 Ga. App. 44 (2003).

Source:

What's the Decision

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Motion for New Trial, Appeal and Habeas Corpus

When it's time for a change

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