Police Vehicle Searches under the Fourth Amendment: Evaluating Chiefs' Perceptions of Search Policies and Practices after *Arizona v Gant*

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ABSTRACT

In 2009, in *Arizona v Gant*, the United States Supreme Court significantly changed the Fourth Amendment norms governing police searches of vehicles incident to arrest. To date, there is no known empirical study of police practices and policies regarding these norms. This survey study aims to fill this "gap" by surveying police chiefs from large, populated U.S. cities concerning their perceptions of police practices and policies in the area of vehicle searches, in particular vehicle searches incident to arrest. Specifically, the study aims to examine chiefs' perceptions of the frequency with which police officers search vehicles under Gant/search incident

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doctrine compared to other procedures for searching vehicles under the Fourth Amendment (i.e., the impoundment/inventory procedure, the automobile search exception, the consent search exception, and searches under warrant). In addition, the survey explores chiefs' perceptions regarding the implications of Gant for police vehicle searches incident to arrest specifically and police vehicle searches more broadly. In general, the study's detailed findings align with current Fourth Amendment norms in the police vehicle search context; that is, chief perception of officer policies and practices related to vehicle searches aligns with Fourth Amendment requirements in this area, including search incident to arrest law under Gant. In addition, almost half of the chiefs surveyed indicated that officers have searched vehicles less often incident to arrest because of Gant. This latter finding is noteworthy, and appears to align with the limitations imposed by Gant on vehicle searches incident to arrest. Various implications of the findings for the police and the judiciary are explored.

I. INTRODUCTION

This empirical study of law enforcement chiefs from large, populated cities throughout the United States examines police department practices and policies in the area of vehicle searches, in particular vehicle searches incident to arrest. The legal norms regarding the latter searches substantially changed in 2009 as a result of the landmark United States Supreme Court case of *Arizona v Gant*.[1] This survey study is the first known empirical study on the implications of *Gant* for police vehicle search practices and policies. Specifically, the study aims to examine police chiefs' perceptions of the frequency with which police officers search vehicles under *Gant*/search incident doctrine, compared to other procedures for searching vehicles under the Fourth Amendment (i.e., the impoundment/inventory procedure, the automobile search exception, the consent search exception, and searches under warrant). In addition, the survey explores police chiefs' perceptions regarding the implications of *Gant* for police vehicle searches incident to arrest specifically and police vehicle searches more broadly.

Though the underlying jurisprudence (i.e., *Gant* and its progeny) forming the basis of this study's focus derives from courts in the United

1 *Arizona v Gant*, 129 S Ct 1710 (USSC 2009) [*Gant*].

States, the study's findings have implications beyond the American context. For example, the study provides broader insights into possible interactions between police perception and legal rules, including jurisprudentially derived rules. In particular, the study sheds light on how changes to legal rules, including those of a constitutional variety, may have implications for police perception of workplace conduct or practices. This conduct invariably comprises certain police work aimed at investigating and solving crimes, such as investigatory searches of vehicles and other locations (the former being the focus of the current study). It is also worth noting that some of the police investigatory practices and techniques examined in this study (e.g., searches under consent or warrant) may be utilized by law enforcement in jurisdictions outside the United States. Accordingly, this study provides much-needed exploration of the potential intersections between evolving legal norms concerning critical police work-place practices, on the one hand, and law enforcement perception of those practices, on the other hand. The need is amplified in this case since both the underlying police conduct in question (i.e., vehicle searches) and the legal norms controlling it (e.g., *Gant*) have the potential to impact and shape individuals' constitutional privacy rights. In particular, this study finds that in the wake of *Gant*, a majority of police chiefs perceive that officers in their departments search vehicles incident to the arrest of vehicle occupants less or somewhat less frequently than they search vehicles under (1) the impoundment and inventory exception to the Fourth Amendment warrant requirement, and (2) the consent exception to the warrant requirement.[2] On the other hand, a majority of chiefs report that officers search vehicles incident to the arrest of vehicle occupants more or somewhat more often than they search vehicles under warrant.[3] The comparative data between police searches incident to arrest (*Gant*) and the automobile search exception was less conclusive, with the largest percentage of chiefs perceiving that officers search vehicles incident to the arrest of vehicle occupants less or somewhat less frequently than they search vehicles under the automobile exception.[4] Nonetheless, a significant percentage of chiefs reported that their officers either search vehicles incident to arrest more or somewhat more frequently than they search vehicles under the automobile

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2 See Part IV (Findings) and Table 1, *below*.

3 *Ibid.*

4 *Ibid.*

exception or they (the officers) search vehicles at the same frequency under both exceptions (i.e., the search incident and automobile exceptions).[5] In addition, the survey study revealed that the majority of chiefs perceived that officers in their departments did not search vehicles less often incident to the arrest of a vehicle occupant because of *Gant*.[6] Finally, a substantial majority of chiefs noted that officers did not search vehicles less often overall because of *Gant*.[7]

In general, the empirical survey findings align with current Fourth Amendment norms in the police vehicle search context; that is, police chief perception of officer policies and practices related to vehicle searches align with Fourth Amendment requirements in this area, including search incident to arrest law under *Gant*.[8] However, the comparative findings regarding chief perception of search incident doctrine in the vehicle context and the automobile exception are less conclusive, and may reflect the complexities of the legal landscape in these areas.[9] In addition, police chief perception that officers have not searched vehicles less often overall because of *Gant* may reflect the fact that officers have a variety of procedures and tools available to them under the law to search vehicles (i.e., apart from Gant and search incident doctrine). Lower courts have also been sanctioning police vehicle searches under these alternative procedures, even when *Gant* disallows the search in question.[10] Finally, the study's finding that a slim majority of chiefs reported that officers have not searched vehicles less frequently incident to arrest because of *Gant* may reflect the nature of *Gant*'s evidentiary prong, as well as the expansive interpretation of the prong by numerous lower courts.[11] However, the fact that nearly half of the chiefs surveyed indicated that officers have searched vehicles less often incident to arrest because of *Gant* is also noteworthy, and appears to

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5 *Ibid.*

6 See Part IV (Findings) and Table 2, *below*.

7 See Part IV (Findings) and Table 3, *below*.

8 See Part IV (Findings) and Table 3 and Part V (Analysis), *below*.

9 See Part V (Analysis), *below*.

10 *Ibid.*

11 *Ibid.*

align with the limitations placed by *Gant* on vehicle searches incident to arrest.[12]

Part II of this study explains the *Arizona v Gant* decision and the previous landmark, United States Supreme Court case in the vehicle search incident to arrest context, *New York v Belton*.[13] Part III consists of the study's methodology, including information regarding the respondents for the survey (i.e., the police chiefs) as well as the survey questions. This part also includes a brief review of the relevant literature. Part IV explains the study's findings concerning police chief perception of officer practices and policies in the area of vehicle searches under the Fourth Amendment, including vehicle searches incident to arrest (i.e., *Gant*). The findings are also summarized in three tables at the end of Part IV. Part V analyzes the study's findings and offers possible conclusions that can be derived from the survey data.

II. ARIZONA V GANT[14]

This Part consists of a detailed explanation of the recent, landmark United States Supreme Court case of *Arizona v Gant*, which significantly changed search incident to arrest law in the vehicle context. The Part also addresses previous, landmark United States Supreme Court cases in this context, *New York v Belton* and *Thornton v United States*.[15]

In *Gant*, two police officers knocked on the door of a home, and asked to speak to its owner. The defendant, Gant, who answered the door, explained that the owner was not present at the time but would return later.[16] After leaving the home, the officers discovered through a records check that there was an outstanding warrant for Gant's arrest for driving with a suspended license.[17] Upon their return to the same home where they

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12 *Ibid*.

13 *New York v Belton*, 453 US 454 (USSC 1981) [*Belton*].

14 Part II includes an excerpt from Christopher D Totten, "*Arizona v. Gant* and Its Aftermath: A Doctrinal 'Correction' Without the Anticipated Privacy 'Gains'" (2010) 46 Crim L Bull 1293 [*Aftermath*], with permission © 2010 Thomson Reuters. Note that several edits were made to the excerpt for the purpose of clarity and readability.

15 *Thornton v United States*, 541 US 615 (USSC 2014) [*Thornton*].

16 *Gant*, *supra* note 1 at 1710, 1714–1715.

17 *Ibid* at 1715.

had spoken with Gant earlier in the day, the officers noticed a man in the back of the home and a woman in a vehicle parked in the front of the home. Upon the arrival of a third officer to the home, the man was arrested for providing a false name and the woman was arrested for drug paraphernalia possession. Both of these arrestees were then handcuffed and placed in separate patrol cars.[18] After these events transpired, Gant arrived at the home in his car. He parked his car on the driveway, exited the vehicle, and closed the door.[19] One of the officers, who at the time was approximately thirty (30) feet away from Gant, called to him. Gant and this officer walked towards each other, meeting approximately ten to twelve (10–12) feet from Gant's car.[20] Upon their meeting, the officer arrested and handcuffed Gant.[21] With no other police vehicles available in which to place Gant, the arresting officer called for "back-up." When two "back-up" officers arrived, Gant was placed handcuffed in the backseat of their locked patrol car.[22] Officers then proceeded to search Gant's car, and found a bag of cocaine in the backseat within a jacket pocket, as well as a gun.[23]

Gant was subsequently charged for drug possession and drug paraphernalia possession.[24] He moved to exclude the drug evidence by arguing that the police search of his vehicle violated the Fourth Amendment.[25]

The Court in *Gant* found that under these particular factual circumstances, the search by police of the defendant Gant's vehicle was unconstitutional under the Fourth Amendment.[26] In reaching its holding,

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18 *Ibid.*

19 *Ibid.* Officers recognized Gant's car as it approached the driveway, and one officer named Griffith was able to confirm that Gant was the driver of the car by shining a flashlight into the car as Gant drove by.

20 *Ibid.*

21 *Ibid.*

22 *Ibid.*

23 *Ibid.*

24 *Ibid.*

25 *Ibid.*

26 *Ibid* at 1714, 1723–1724. 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 US Supreme Court, in reaching its finding of unconstitutionality, affirmed the decision of the Arizona Supreme Court, holding that

the Court clarified existing search incident to arrest doctrine in the vehicle context; in particular, the Supreme Court squarely rejected a majority trend among lower courts since the time of *New York v Belton*, its previous foundational case in this context. Since *Belton*, lower courts 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] The Supreme Court in *Gant* rejected this interpretative reading of *Belton* by lower courts because it was inconsistent with the justifications underlying the traditional rule allowing police to search the suspect's "armspan," or "reaching distance," incident to an arrest (e.g., officer safety

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the search of defendant's vehicle was unreasonable. See *ibid* at 18. For further description of the Arizona Supreme Court's decision, see *ibid* at 1715–1716.

[27] *Ibid* at 1718. According to the Court in *Gant*, "[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* ...." The Court in *Gant* 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." 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" (*Gant*, *supra* note 1 at 1718, citing *Belton*, *supra* note 13 at 466). Note that 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 *Gant*, Alito J, dissenting at 1). 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 40. The holding in the US 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" (see *Belton*, *supra* note 13 at 460). 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 ite[m]'" (*Belton*, *supra* note 13, citing *Chimel v California*, 395 US 752 (USSC 1969) at 763 [*Chimel*]).

and evidence preservation as established in the Court's foundational *Chimel* decision), and because of the realities of police-citizen encounters in the particular context of vehicle searches and arrests.[28] For example, most vehicle occupants who are arrested by police will not be within actual "reaching distance" of their passenger compartment at the time of the vehicle search because they will be secured with handcuffs, or in some other way, in the officer's patrol car; hence, these occupants will not be able to destroy evidence located in the compartment or retrieve a weapon from the compartment capable of causing harm to the officer. Thus, the prevailing, expansive reading of *Belton* effectively meant that in many cases courts were sanctioning searches by police incident to the arrest of vehicle occupants where the traditional justifications underlying search incident doctrine were entirely absent. Accordingly, the Court specifically held in *Gant* 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."[29]

Theoretically speaking, this holding statement could have completed the Supreme Court's legal opinion, as it had seemingly at this point removed the aforementioned conceptual inconsistency reflected in the post-*Belton* interpretative trend among lower courts. But the Court in *Gant* continued to add to its holding, indicating that "[a]lthough it does not follow from *Chimel* [e.g., the Court's seminal case establishing the modern search incident to arrest doctrine along with the doctrine's scope and underlying justifications], 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.'"[30]

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[28] *Gant*, *supra* note 1 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 that "[t]here 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." This is often referred to as the "armspan" or "wingspan" rule. For a good discussion of the underlying justifications for traditional search incident to arrest doctrine (e.g., officer safety and evidence preservation), see *Chimel*, *supra* note 27 at 762–763.

[29] *Gant*, *supra* note 1 at 1719.

[30] *Ibid* citing *Thornton*, *supra* note 15 at 632. See also *Gant*, *supra* note 1 at 1715, where the

Applying its two-pronged holding statement, or test, to the facts of the case, the Court found that defendant *Gant* was neither in reaching distance of his vehicle at the time of the police search nor was there a possibility that police could find evidence related to his offense of arrest (e.g., driving with a suspended license). Concerning the first prong of the *Gant* test (the "safety" prong), 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, was outnumbered by police officers.[31] In addition, the defendant, along with the other arrestees, was "handcuffed and secured in separate patrol cars"[32] prior to the search by police of defendant's car.[33] Regarding the second prong of *Gant* (e.g., the "evidentiary basis" prong),

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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]." However, in "other [cases], including *Belton* and *Thornton*, the offense of arrest will supply a basis for searching the passenger compartment of an arrestee's vehicle and any containers therein." Note that, in both *Belton* and *Thornton*, the underlying offenses of arrest were drug crimes. The second, "evidentiary" prong of Gant has its source in a separate opinion in *Thornton* by Justice Scalia. See *Thornton*, *supra* note 15. 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" (*Thornton* at 622) <http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2004502347&pubNum=0000708&originatingDoc=Ib1f5afecfbc211dfb11b998a49d26673&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)>.
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 27.

31 There were five officers to the three arrestees at the scene. *Gant*, *supra* note 1 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 may also 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).

32 *Gant*, *supra* note 1 at 1719.

33 *Ibid.*

because the defendant was arrested for driving with a suspended license, the Court concluded that "police could not expect to find evidence in the passenger compartment of [defendant's] car."[34]

Interestingly, the Court rejected the broad reading of *Belton* previously endorsed by lower courts—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—because such a reading both fails to respect important Fourth Amendment privacy interests and does not significantly contribute to law enforcement interests. The Court noted that while citizens have less privacy interests in vehicles than homes, the privacy interest afforded vehicles is nevertheless "important and deserving of constitutional protection."[35] In addition, according to the Court, the broad reading of *Belton* does not significantly contribute to law enforcement interests because it does not provide sufficient guidance, or clarity, to officers conducting searches of vehicles incident to the arrest of recent occupants.[36] Finally, the Court rejected a broad reading of *Belton* because officer safety and concerns regarding evidence destruction or concealment by vehicle occupants, are

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34 *Ibid.* 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."

35 *Ibid* at 1720. 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."

36 *Ibid* at 1720–1721. 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." 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."

adequately addressed by both its more narrow reading of *Belton* as well as by other exceptions to the Fourth Amendment warrant requirement in the vehicle context. For example, even 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."[37] In addition, under another exception to the warrant requirement dealing with vehicles, officers may conduct a protective search or "frisk," of the passenger compartment of a vehicle for weapons if they have reasonable suspicion that any vehicle occupant or recent occupant is dangerous and may gain immediate access to a weapon within the vehicle.[38] 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.[39]

Finally, the Court took issue with the dissent's argument that police reliance on an expansive *Belton* rule for twenty-eight years justified maintaining the rule. 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:

> 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.[40]

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37 *Ibid* at 1721.

38 *Ibid* citing *Michigan v Long*, 463 US 1032 (USSC 1983) [*Long*].

39 *Gant*, *supra* note 1 at 1721 citing *US v Ross*, 456 US 798 (USSC 1982) [*Ross*]. 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]."

40 *Gant*, *supra* note 1 at 1722–1723. 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" (at 1722).

III. METHODOLOGY

This part will first discuss the respondents or samples (i.e. the police chiefs) involved in the survey study. The part will then turn to an explanation of the sample instrument (i.e., the survey) used in the study, including the survey questions. Finally, the part will turn to a brief review of the relevant, existing literature.

A. Samples

For this study, surveys were mailed to police chiefs in 250 large cities in the United States that have a population of 100,000 or more. Chiefs' names and addresses were obtained from the 2014 National Directory of Law Enforcement Administrators. On September 8, 2015, cover letters and surveys were mailed with a return, self-addressed stamped envelope, asking the chiefs about their police department's practices and policies on vehicle searches, in particular vehicles searches incident to arrest under *Gant*. A follow-up survey was conducted on October 16, 2015. In total, forty-two usable surveys were returned (i.e., a 16.8 percent response rate). (Note: Because not every survey respondent opted to answer all of the questions appearing on the survey, some of the numbers for certain responses in this section may not equal 42).

The mail survey method was chosen for this study for three principal reasons. First, for surveys such as this one with a national scope, mailing the survey entails considerable time and cost savings compared to other available methods (e.g., a survey using a one-on-one interview approach).

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 offence 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." 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 Breyer J's dissenting reasons at 1725–1726. Justice Scalia wrote a concurring opinion.

Second, a mail survey allows the respondent to answer each question in writing more freely, without concern or fear of being pressured to do so by an interviewer. In other words, the respondent can take more time to answer each question. Third, mail surveys provide greater assurance for the respondents that their answers will be either anonymous or confidential, making them more willing to participate in the study.

With respect to the chiefs' highest level of education, twenty-eight (73.7%) chiefs or respondents described having a master's degree or above, and six (15.8%) reported that they had obtained a bachelor's degree. The remaining four respondents (10.5%) indicated that they possessed an associate's degree or "some college." Regarding the duration or length of service in law enforcement, six (15.8%) respondents described being in law enforcement for less than 25 years, while the remaining thirty-two respondents (84.2%) indicated having been in law enforcement for more than 25 years. Finally, thirty-two (82.1%) respondents stated that their police department offered a training program or workshop on the propriety of vehicle searches and arrests in the past year. Twenty-three respondents (74.2%) stated that most training programs were fewer than five hours in duration. Accordingly, based on this data, the three factors of graduate education, length of service, and training reflect the fact that the vast majority of the respondents had more than sufficient background, knowledge, and experience in law enforcement and vehicle searches to respond to the study's survey. Overall, the respondents' personal and law enforcement background make their responses to the survey more credible and not based on mere speculation.

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

The mailed survey instrument contained six questions on police practices and policies related to vehicle searches. The chiefs were asked: (1) whether officers in their departments currently search vehicles based on or incident to the arrest of a vehicle occupant more, the same, or less than they search vehicles under the automobile search exception; (2) whether officers in their departments currently search vehicles based on or incident to the arrest of a vehicle occupant more, the same, or less than they search vehicles

under the impoundment and inventory procedure; (3) whether officers in their departments currently search vehicles based on or incident to the arrest of a vehicle occupant more, the same, or less than they search vehicles under the consent search exception; (4) whether officers in their departments currently search vehicles based on or incident to the arrest of a vehicle occupant more, the same, or less than they search vehicles by obtaining a warrant; (5) whether in approximately the last two years, officers have searched vehicles less often based on or incident to the arrest of that vehicle's occupant because of the safety and evidentiary prongs of Gant; and (6) whether in approximately the last two years, officers have searched vehicles less often overall because of the safety and evidentiary prongs of Gant.[41] Regarding questions one through four, respondents could select from the following options listed on the survey in order to indicate the frequency with which officers search vehicles incident to arrest, on the one hand, compared to the other vehicle search procedures, on the other hand: More, Somewhat More, the Same, Somewhat Less, Less. For these questions (i.e., one through four), the possible mean scores ranged from 1 to 5, with 1 meaning "Less" and 5 meaning "More." The chiefs' responses on questions one through four are summarized in Table 1 in the Findings section. For question numbers 5 and 6 above, which appear in Table 2 in the Findings section, the chiefs could respond by simply indicating "yes" or "no."

B. Relevant Literature

Though there are no known studies on police perception of vehicle searches incident to arrest under *Gant*, there are a few previous empirical studies focused on the related topic of officer knowledge of search and

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41 Note that these latter two survey questions required the chiefs to consider certain potential impacts of *Gant* on police vehicle search practices. In a related study, the co-authors of the current study found that the vast majority of chiefs (88.1%) that were surveyed had heard of *Gant*. See Christopher D Totten & Sutham Cobkit, "Police Vehicle Searches Incident to Arrest: Evaluating Chiefs' Knowledge of *Arizona v Gant*" (2017) 11 NYU JL & Liberty 257 [*Evaluating Chiefs*]. See *ibid* at 276, Table 3. Overall, however, this related study concluded that chief knowledge on search incident to arrest law in general and *Gant* in particular was "rather uneven." See *ibid* at 258, 273–276. A future study may examine in more depth the relationship, if any, between police knowledge of *Gant*, on the one hand, and police perception of vehicle searches and their frequency following *Gant*, on the other hand. A future study may also include "line," or patrol, officers.

seizure laws. For example, Perrin, Caldwell, Chase, and Fagan conducted a survey study on overall police knowledge of search and seizure laws. This study involved mostly officers and detectives from a single county in California. The successful response rate regarding these laws was rather low (i.e., approximately 50%).[42] In another study, Eugene Hyman concluded that "the average officer did not know or understand proper search and seizure rules,"[43] and that "supervisors and senior officers only achieved slightly improved scores."[44] Similarly, research undertaken by Stephen Wasby found "recruit training is sadly lacking in criminal procedure content"[45] 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."[46] Moreover, the current study's authors surveyed law enforcement chiefs regarding their understanding of search and seizure law (i.e., the knock-and-announce rule). The authors concluded that chiefs understood the rule in factual situations involving both searches[47] and arrests.[48] However, these same authors also found that police chief knowledge of search incident to arrest law in general and *Gant* in particular was "rather uneven."[49]

In addition, Heffernan and Lovely found that approximately 50% of law enforcement officers in their study, committed intentional or

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42 See L Timothy Perrin et al, "If It's Broken, Fix It: Moving Beyond the Exclusionary Rule" (1998) 83 Iowa L Rev 669 at 712–713, 724–725, 735. Perrin et al. noted "[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" (at 719).

43 Eugene Michael Hyman, "In Pursuit of a More Workable Exclusionary Rule: A Police Officer's Perspective" (1979) 10 PAC LJ 33 at 47.

44 *Ibid*.

45 Stephen L Wasby, "Police Training about Criminal Procedure: Infrequent and Inadequate" (1978) 7 Policy Studies J 461 at 464.

46 *Ibid* at 466.

47 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?" (2012) 15:3 New Criminal L Rev 446.

48 See Christopher D Totten & Sutham Cobkit, "The Knock and Announce Rule and Police Arrests: Evaluating Alternative Deterrents to Exclusion for Rule Violations" (2013) 48 USF L Rev 71 at 99–100.

49 See *Evaluating Chiefs*, *supra* note 41 at 273–276.

unintentional errors in applying search and seizure laws.[50] Finally, Orfield undertook two studies on the exclusionary rule, which is one remedy for police violations of search and seizure laws. Orfield concluded that officers generally know the reasons for evidence exclusion in the cases they work[51] and approach subsequent searches with more caution when evidence has been excluded in their cases.[52]

IV. FINDINGS

Based on the data collected from the survey (see Table 1 following this part), the majority of chiefs (56%) reported that police officers in their departments search vehicles incident to the arrest of a vehicle occupant less or somewhat less frequently than they search vehicles under the impoundment and inventory exception to the Fourth Amendment warrant requirement. Conversely, chiefs noted that only a small minority of officers in their departments (14.6%) searched vehicles incident to arrest more or somewhat more frequently than they searched vehicles through the impoundment and inventory exception or procedure. Indeed, this question or finding regarding the comparative frequency with which police search

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50 William C Heffernan & Richard W Lovely, "Evaluating the Fourth Amendment Exclusionary Rule: The Problem of Police Compliance with the Law" (1991) 24 U Mich JL Ref 311 at 348. See also Ronald L Akers & Lonn Lanza-Kaduce, "Exclusionary Rule: Legal Doctrine and Social Research on Constitutional Norms" (1986) 2 Sam Houston State U Research Bull at 1–6 (surveying over 200 officers across two cities with 19% of respondents conceding that they performed searches of "questionable authenticity" at least once each month and 4% acknowledging that they knowingly committed invalid searches at least once a month).

51 Myron Orfield, Jr, "The Exclusionary Rule and Deterrence: An Empirical Study of Chicago Narcotics Officers" 54 U Chicago L Rev 1016 at 1017–18, 1027–29 [*Police Study*].

52 *Ibid.* Orfield also determined that the exclusionary rule assists officers in mastering search rules (noting exclusion of evidence promotes the implementation of certain training programs to assist officers in complying with search and seizure laws); see also Myron Orfield, Jr, "Deterrence, Perjury, and the Heater Factor: An Exclusionary Rule in the Chicago Criminal Courts" (1992) 63 U Colo L Rev 75 at 80–82 [*Courts Study*] (evidence suppression helpful in teaching police about search and seizure laws). Orfield's police study involved patrol or "line" officers as well as detectives trained in drug detection and investigation. Orfield, *Police Study*, *supra* note 51, at 1024–1025. Orfield's courts study included judges, public defenders, and prosecutors from an Illinois county. See Orfield, *Courts Study* at 81–84.

vehicles incident to arrest compared to the impoundment and inventory procedure received the lowest mean score (i.e., 2.20). Similarly, the majority of the chiefs (52.4%) reported that police officers in their departments search vehicles less or somewhat less under the search incident to arrest exception than they search vehicles under the consent search exception to the Fourth Amendment. Only 14.3 percent of chiefs stated that officers search vehicles more or somewhat more frequently incident to the arrest of a vehicle occupant than they search vehicles under the consent search exception.

However, a sizeable majority of chiefs (59.6%) indicated that officers currently search vehicles incident to the arrest of a vehicle occupant more or somewhat more than they obtain warrants to search vehicles. On the other hand, 28.5% of chiefs reported that officers search vehicles incident to arrest less or somewhat less than they search vehicles by obtaining a warrant. Indeed, this question or finding regarding the comparative frequency with which police search vehicles incident to arrest compared to under warrant, received the highest mean score (i.e., 3.43).

Regarding the automobile exception to the Fourth Amendment, the largest percentage of chiefs (45%) stated that officers in their departments search vehicles incident to the arrest of vehicle occupants less or somewhat less frequently than they search vehicles under the automobile exception. But 30% of chiefs reported that officers search vehicles at the same frequency under both exceptions (i.e., the search incident to arrest exception and the automobile exception). In addition, 25% of chiefs indicated that officers actually search vehicles incident to the arrest of vehicle occupants more or somewhat more frequently than they search vehicles under the automobile exception. The mean score for the automobile exception question or finding was 2.55.

Moreover, based on the survey data (see Table 2 following this part), the majority of chiefs (55%) report that in the last two years preceding the survey, officers in their departments did not search vehicles less often incident to the arrest of a vehicle occupant because of the safety and evidentiary prongs of Gant. Finally, in the last two years preceding the survey, a strong majority of chiefs (65%) reported that officers in their departments did not search vehicles less often overall because of the safety and evidentiary prongs of Gant. The latter finding is reflected in Table 3 following this part.

Table 1. Respondents' Responses Regarding Police Practices and Policies on Vehicle Searches (N = 42)

Question	More or Somewhat More	The Same	Less or Somewhat Less	Mean Score
Officers in your department currently search vehicles based on or incident to an arrest of a vehicle occupant_____than they search vehicles under the *automobile search exception*	10 (25.0%)	12 (30.0%)	18 (45.0%)	2.55
Officers in your department currently search vehicles based on or incident to an arrest of a vehicle occupant_____than they search vehicles under the *impoundment search exception*.	6 (14.6%)	12 (29.3%)	23 (56.0%)	2.20
Officers in your department currently search vehicles based on or incident to an arrest of a vehicle occupant_____than they search vehicles under the *consent search exception*.	6 (14.3%)	14 (33.3%)	22 (52.4%)	2.36
Officers in your department currently search vehicles based on or incident to an arrest of a vehicle occupant_____than they search vehicles by *obtaining a warrant*.	25 (59.6%)	5 (11.9%)	12 (28.5%)	3.43

Note: Scores ranged from 1 to 5, with 1 meaning less and 5 meaning more.

Table 2. Respondents' Perception of Police Vehicle Search Incident Frequency Because of Gant (N=42)

Question	Yes	No
In approximately the last two years, officers have searched vehicles less often incident to arrest because of Gant (i.e., 2-prongs rule).	18 (45%)	22 (55%)

Table 3. Respondents' Perception of Police Vehicle Search Frequency Because of Gant (N=42)

Question	Yes	No
In approximately the last two years, officers have searched vehicles	14 (35%)	26 (65%)

V. ANALYSIS

In general, the empirical findings consisting of the survey data align with current Fourth Amendment norms in the police vehicle search context. In particular, the chiefs' perceptions of officer policies and practices in their departments related to vehicle searches aligns with the requirements and realities of Fourth Amendment norms in this area, including search incident to arrest law under *Gant*. For example, most chiefs (56%) report that officers in their departments search vehicles incident to the arrest of vehicle occupants less or somewhat less than they search vehicles under the impoundment and inventory procedure or exception to the Fourth Amendment.[53] This finding aligns with the relative easiness under current Fourth Amendment norms for police to search vehicles under the impoundment and inventory procedure compared to searching vehicles incident to arrest under *Gant*. In particular, to search under *Gant*, officers must first develop probable cause to arrest a vehicle occupant or recent occupant, and then satisfy the requirements of either the safety or evidentiary prongs of *Gant*. Even if officers meet these criteria, they are limited under *Gant* to searching the passenger compartment of the vehicle.[54]

However, to search under the impoundment and inventory procedure, officers only need to identify one of many allowable justifications for impoundment.[55] Once impounded, a vehicle inventory search may be

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53 See Part IV (Findings) and Table 1, *above*.

54 See *Gant*, *supra* note 1 at 1710, 1719. See also *supra* notes 29 and 30 and accompanying text (explaining safety and evidentiary prongs of *Gant*). See also *Belton*, *supra* note 13 at 460, 461 (limiting searches incident to arrest at vehicles to passenger compartments).

55 See *South Dakota v Opperman*, 428 US 364 at 368–369 (USSC 1976) [*Opperman*] (allowing vehicle impoundment to remove any impediment to the flow of traffic and thereby promote public safety, and also to preserve evidence following a vehicular accident). See also *Opperman* at 369 (allowing impoundment as a result of parking

conducted without a warrant or probable cause, and is only limited by the internal regulations of the officer's department and the general requirement that the officer conduct the inventory for non-investigatory, administrative reasons.[56] Moreover, the United States Supreme Court has approved vehicle inventories of almost every imaginable area of the vehicle.[57] Accordingly, chief perception that officers in searching vehicles rely upon the impoundment and inventory procedure more frequently than the search incident exception aligns with the requirements and comparative flexibility of the relevant, underlying Fourth Amendment norms.

Similarly, the empirical finding that most police chiefs (52.4%) perceive that officers in their departments search vehicles under the search incident to arrest exception less or somewhat less than they search vehicles under the consent exception, aligns with Fourth Amendment laws.[58] For example, in order to search vehicles under the consent search exception, police essentially need only to obtain voluntary and knowing consent from an

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violations); see also *Colorado v Bertine*, 479 US 367 (USSC 1997) [*Bertine*] (allowing impoundment following arrest of the driver); see also *United States v Ford*, 872 F.2d 1231 (6th Cir 1989) (impoundment due to driver injury); *United States v Lopez*, 547 F.3d 364 (2d Cir 2008) at 372 (driver intoxication); *United States v Mitchell*, 2013 WL 3808152 (D Fla 2013) (vehicle has stolen tires); *United States v Bizzell*, 19 F.3d 1524 (4th Cir 1994) (vehicle forfeiture); *United States v Penn*, 233 F.3d 1111 (9th Cir 2000) (driving without valid license); *United States v Cooper*, 949 F.2d 737 (5th Cir 1991) (vehicle seized as instrument of crime).

56 See *Opperman*, *supra* note 55 at 372 (approving an inventory search of vehicle following impoundment to secure vehicle's contents). See also *Opperman* at 372 (inventories conducted according to "standard police procedures are reasonable."). See also *Bertine*, *supra* note 55 at 371 (no warrant or probable cause needed for police inventory search due to its routine nature and non-criminal, administrative purposes). See also *ibid* at 375 ("Nothing in [our previous decisions] prohibits the exercise of police discretion [in inventorying vehicles] so long as that discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity"). See *ibid* at 372 ("…inventory procedures serve to protect an owner's property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger.") See also *Florida v Wells*, 495 US 1 at 4 (1990) (inventory searches must not be for criminal, investigatory purposes).

57 See *Bertine*, *supra* note 55 at 375 (permitting inventory search of closed backpack in passenger compartment). See also *Opperman*, *supra* note 55 at 375, n 10 (permitting inventory of glove compartment); *United States v Rankin*, 261 F.3d 735 (8th Cir 2001) (trunk); *United States v Lumpkin*, 159 F.3d 983 (6th Cir 1998) at 988 (engine compartment).

58 See Part IV (Findings) and Table 1, *above*.

authorized person to search the vehicle. No development of probable cause by an officer is required prior to the officer searching under the consent exception.[59] In addition, such consent need not be preceded by a police instruction that the person is free to withhold consent, and in non-custodial situations no Miranda warnings need be provided.[60] Furthermore, so long as the person does not place a restriction on an area of the vehicle to search and the item or object to be searched is of relatively smaller size, police are permitted to search the entire vehicle for the object.[61]

In contrast, to search the more limited area of the vehicle passenger compartment incident to arrest under *Gant*, police must first develop probable cause to arrest an occupant of the vehicle and then must ensure themselves that at least one of the two, specific prongs of *Gant* is satisfied.[62] Thus, the chiefs' report that officers search vehicles less or somewhat less

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[59] See *Schneckloth v Bustamonte*, 412 US 218 at 228 (USSC 1973) [*Schneckloth*]. ("[T]he Fourth and Fourteenth Amendments require that consent not be coerced, by explicit or implicit means, by implied threat or covert force.") See also *ibid* at 228–229 ("Just as was true with confessions the requirement of 'voluntary' consent reflects a fair accommodation of the constitutional requirements involved.") Individuals authorized to give consent for a police vehicle search are those individuals whose Fourth Amendment rights would be violated if the police unreasonably searched the vehicle (i.e., those individuals whose reasonable expectations of privacy would be violated if police illegally searched the vehicle without valid consent). See *Rakas v Illinois*, 439 US 128 at 133–134 (USSC 1978). *See ibid* at 143 (The "capacity to claim the protection of the Fourth Amendment depends not upon a property right in the invaded place but upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place.")

[60] See *Schneckloth*, *supra* note 59 at 248–249. ("Voluntariness is a question of fact to be determined from all the circumstances, and while the subject's knowledge of a right to refuse is a factor to be taken into consideration, the prosecution is not required to demonstrate such knowledge as a prerequisite to establish a voluntary consent.") See also generally *Miranda v Ariz*, 384 US 436 at 478–79 (USSC 1966) (noting that the warnings apply to individuals in custody who are interrogated by police).

[61] See *Florida v Jimeno*, 500 US 248 at 251 (USSC 1991) [*Jimeno*] (allowing police to search a particular container in passenger compartment when defendant placed no limitation on the search of his vehicle for drugs). See also *United States v Neely*, 564 F.3d 346 at 349–351, 353 (4th Cir 2009) (restricting police search to vehicle trunk based on defendant's consent to search only that area of vehicle). See also *Jimeno*, *supra* at 251 (absent restriction placed by defendant on scope of consent search, scope "generally defined by its expressed object").

[62] See generally *supra* notes 29 and 30 and accompanying text (explaining *Gant* rule or prongs).

frequently under search incident doctrine than they search vehicles under the consent exception reflects the relative ease under the Fourth Amendment with which police can obtain permission from drivers and other authorized persons to search vehicles, and the often greater, allowable scope of a consent search.

However, most chiefs (59.6%) report that police officers in their departments search vehicles incident to the arrest of vehicle occupants more or somewhat more frequently than they search vehicles under warrant.[63] This finding aligns with the relatively stricter requirements under the law for obtaining a search warrant. For example, to obtain a warrant to search a vehicle, officers must prepare an affidavit establishing probable cause to search a particular vehicle for contraband, and then present the affidavit to a judge under oath. In turn, the judge must review the affidavit and decide whether it merits the issuance of a search warrant.[64] These stricter requirements consume valuable officer time and energy; in contrast, officers can search a vehicle incident to the arrest of a vehicle occupant on a public roadway without obtaining a search warrant (or an arrest warrant, for that matter). Instead, in order to search a vehicle incident to arrest on a public roadway, officers under *Gant* need only develop probable cause for the occupant's arrest while at the scene of the vehicle stop. Based on the arrest, police may search the vehicle's passenger compartment without a warrant provided one of the two *Gant* prongs is satisfied. Significantly, under the search incident doctrine in this context, police need not present the probable cause evidence underlying the arrest or search to a judge for evaluation.[65] Accordingly, the fact that it is generally quicker and less cumbersome for officers to search vehicles incident to arrest compared to with a warrant may explain why the majority of chiefs report that officers search vehicles more frequently using the former method.

The findings consisting of the comparative data between vehicle searches incident to arrest and searches under the automobile exception appear to be less conclusive and more nuanced. On the one hand, the largest percentage of chiefs (45%) report that their officers search vehicles

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63 See Part IV (Findings) and Table 1, *above*.

64 See US Const amend IV; see also generally *Warden (Maryland Penitentiary) v Hayden*, 387 US 294 (USSC 1967). See also *Coolidge v New Hampshire*, 403 US 443 at 467 (USSC 1971).

65 See generally *supra* notes 29 and 30 and accompanying text (explaining *Gant* rule or prongs).

incident to the arrest of vehicle occupants less or somewhat less frequently than they search vehicles under the automobile search exception.[66] This finding may stem from the fact that in order to search a vehicle incident to arrest under *Gant*, an officer must first establish probable cause to arrest an occupant. If the occupant/arrestee is secured and no longer within reaching distance of the vehicle (i.e., a likely possibility), the officer must then develop—in order to search the passenger compartment under the evidentiary prong of *Gant*—a reasonable belief that evidence related to the crime of arrest is located within the vehicle.[67] In contrast, in order to search a vehicle under the automobile exception, the officer must only develop a reasonable belief (i.e., probable cause) that contraband is located somewhere within the vehicle.[68] There is no accompanying need under the automobile exception to develop probable cause for an arrest. In addition, the automobile exception may allow for a more extensive search of the vehicle beyond the passenger compartment, including the trunk.[69]

However, a combined 55% of chiefs state that they search vehicles incident to arrest more or somewhat more (25%) or at least the same (30%) as they search vehicles under the automobile exception.[70] This finding may reflect the difficulty police encounter in certain instances of developing independent probable cause to search a vehicle under the automobile exception.[71] Rather, police may at times find it easier to search a vehicle under search incident doctrine by arresting an occupant of the vehicle who, for example, has an outstanding arrest warrant against him on a previous crime or law violation (e.g., drug or weapons-related crimes, etc.). Once the

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66 See Part IV (Findings) and Table 1, *above*.

67 See *supra* notes 29 and 30 and accompanying text (explaining the two prongs of *Gant*, the safety and evidentiary prongs).

68 See *Carroll v United States*, 267 US 132 at 149 (USSC 1925) [*Carroll*]; *United States v Ortiz*, 422 US 891 at 896 (USSC 1975).

69 See *Ross*, *supra* note 39. ("If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.") See also *ibid* at 824. ("The scope of a warrantless search of an automobile is … defined by the object of the search and the places in which there is probable cause to believe that it may be found. Probable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab.")

70 See Part IV (Findings) and Table 1, *above*.

71 See *supra* notes 30 and 69 and accompanying text; Part IV (Findings) and Table 1, *above*.

officer essentially fulfills the command of this pre-existing warrant by arresting the occupant, the officer can often search the passenger compartment of the vehicle under the evidentiary prong of *Gant*. This is because lower courts have sanctioned searches under the evidentiary prong following arrests on various crimes.[72] Accordingly, there may be instances when searching vehicles under *Gant* is more straightforward and easier for the officer than developing independent probable cause for the search under the automobile exception.

Separately, the fact that most of the chiefs (65%) report that officers have not searched vehicles less often overall because of the *Gant* ruling may reflect the presence of numerous procedures under the law that officers have at their disposal to search vehicles (i.e., apart from search incident doctrine).[73] For example, the United States Supreme Court and lower courts have sanctioned vehicles searches by police without a warrant under the automobile exception,[74] consent search exception,[75] impoundment/inventory procedure,[76] vehicle "frisk" procedure,[77] and abandonment doctrine.[78] In addition, lower courts have been receptive to finding that even though a vehicle search incident to arrest is not authorized under *Gant,* other search procedures apply to permit the search (e.g, the automobile exception).[79] Thus, it is somewhat unsurprising that a smaller

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72 For a definition of the evidentiary prong of *Gant* (i.e., the underlying rule associated with this prong), see *supra* note 30 and accompanying text. For examples of when the underlying crime of arrest will trigger or satisfy the evidentiary prong of *Gant*, see *Gant*, *supra* note 1 at 1715 (referring to previous cases where the underlying crimes of arrest were related to drugs); *United States v Vinton*, 594 F.3d 14 at 25–26 (Cir DC 2010) (crime of arrest consisted of illegal firearms possession); *United States v Tinsley*, 365 Fed Appx 709 at 711 (8th Cir 2010) (driving under the influence of alcohol). But see *Gant*, *supra* note 1 at 1715 (arrests on traffic violations do not satisfy evidentiary prong).

73 See Part IV (Findings) and Table 3, *above*.

74 See generally *Carroll*, *supra* note 68 at 132.

75 See generally *Schneckloth*, *supra* note 59.

76 See generally *Opperman*, *supra* note 55.

77 See *Long*, *supra* note 38.

78 *United States v Ramirez*, 145 F.3d 345 (5th Cir 1998).

79 See *Aftermath*, *supra* note 14 at 1300–1301, 1306–1307 (citing and explaining lower court decisions relying upon automobile exception and inventory exception to permit police vehicle search, when *Gant* itself disallowed search in question). See also *ibid* at 1302–1303 (explaining lower court cases where protective sweep doctrine allowed vehicle search even though suspect secured farther away from vehicle and hence *Gant*

percentage of chiefs (35%) report that their officers are searching vehicles less often overall because of the limitations placed by *Gant* on searching vehicles incident to arrest.[80] Nevertheless, the notion itself that police perception of job-related practices or conduct may reflect the evolving landscape of jurisprudential decisions and norms is noteworthy.

The study's finding that a little over half (55%) of the chiefs report that officers have not searched vehicles less frequently incident to arrest because of *Gant* may reflect the flexible nature of the evidentiary prong as well as the broad interpretation of the prong by numerous lower courts.[81] For example, police may search the passenger compartment of a vehicle incident to arrest under the evidentiary prong provided they have reason to believe that some evidence related to the crime of arrest is located in the vehicle.[82] In turn, lower courts have permitted vehicle searches under the prong after arrests of occupants or recent occupants on a variety of crimes. Indeed, the only type or category of criminal arrest of vehicle occupants that apparently does not permit or trigger a vehicle search under the evidentiary prong is arrests related to vehicle infractions (e.g. driving on a suspended license).[83]

Significantly, however, nearly half (45%) of the chiefs stated that officers have searched vehicles less often incident to arrest because of *Gant*.[84] This finding reflects a sizeable percentage of chiefs, and aligns with the limitations placed by *Gant* on vehicle searches incident to arrest. This finding also provides insight into how officers' perceptions of key workplace practices may reflect changing legal norms. For example, police and in particular line officers following *Gant* may not search vehicles under its safety prong once the occupant or occupants are secured and no longer able to reach inside the vehicle (e.g., to grab a weapon or destroy evidence).[85] Because officers may ordinarily be inclined for safety and other reasons to secure individuals they arrest and/or move these individuals to locations farther away from the vehicle, officers may be prevented from searching under *Gant*'s safety prong. In turn, they may perceive (albeit incorrectly)

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inapplicable).

80 See Part IV (Findings) and Table 3, *above*.

81 See Part IV (Findings) and Table 2, *above*.

82 *Gant*, *supra* note 30 and accompanying text.

83 *Gant*, *supra* note 72 and accompanying text.

84 See Part IV (Findings) and Table 2, *above*.

85 *Gant*, *supra* note 29 and accompanying text.

that they can no longer search the vehicle incident to arrest under *Gant*; that is, they may not realize that *Gant*'s evidentiary prong may still permit the vehicle search incident to arrest to proceed under these circumstances. This latter point may be ripe for further exploration of an empirical nature.

VI. CONCLUSION

After the United States Supreme Court in *Arizona v Gant* substantially changed the norms surrounding police vehicle searches incident to arrest, no known study has examined empirically law enforcement perception of these and related vehicle search norms. Accordingly, this study fills this gap by surveying police chiefs in the United States on their perceptions concerning police vehicles search practices and policies, including those related to *Gant*. Overall, the study finds that after *Gant*, chiefs perceive that officers search vehicles incident to the arrest of vehicle occupants less or somewhat less frequently than they search vehicles under (1) the impoundment and inventory exception to the Fourth Amendment warrant requirement, and (2) the consent exception to this requirement.[86] On the other hand, a majority of chiefs note that police search vehicles incident to arrest more or somewhat more frequently than they search vehicles by obtaining a warrant.[87] The comparative data between police searches incident to arrest (*Gant*) and the automobile search exception was less conclusive and more nuanced.[88] In addition, the majority of chiefs reported that officers did not search vehicles less often incident to arrest because of *Gant*.[89] Finally, a significant majority of the chiefs perceived that officers did not search vehicles less often in general as a result of *Gant*.[90]

Overall, the empirical findings align with the prevailing Fourth Amendment rules in the police vehicle search context; that is, police chief perception of law enforcement policies and practices concerning vehicle searches aligns with Fourth Amendment norms in this area, including *Gant*.[91] However, the comparative findings concerning chief perception of

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86 See Part IV (Findings) and Table 1, *above*.

87 *Ibid.*

88 *Ibid.*

89 See Part IV (Findings) and Table 2, *above*.

90 See Part IV (Findings) and Table 3, *above*.

91 See Part V (Analysis), *above*.

search incident doctrine in the vehicle context and the automobile exception are somewhat inconclusive, and may mirror the complexities of the law in these areas.[92] Moreover, chief perception that officers have not searched vehicles less often in general as a result of *Gant* may reflect the fact that police have numerous, other tools under the law to search vehicles apart from search incident doctrine.[93] Finally, the study's finding that a small majority of chiefs perceived that officers have not searched vehicles less often incident to arrest as a result of *Gant* may have to do with *Gant*'s evidentiary prong, including judicial interpretation of the prong.[94] Nonetheless, the finding that a sizeable percentage of chiefs perceive that officers search vehicles less frequently incident to arrest because of *Gant* is significant, and seems to align with *Gant*'s restrictions on police vehicle searches incident to arrest.[95] The finding also sheds light on how police perception of important workplace practices (i.e., searches of community members' vehicles incident to those members' arrests) may reflect changing legal norms.

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92 *Ibid.*

93 *Ibid.*

94 *Ibid.*

95 *Ibid.*