Arizona v. Gant: Decoding the Meaning of Reasonable Belief

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Decoding the Meaning of “Reasonable Belief”

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Part I: Introduction.

Reasonable belief. This one phrase from the Supreme Court’s decision in *Arizona v. Gant* transformed what could have been a clear and logical holding into a source of potential uncertainty. At the core of the *Gant* decision is the constriction of the authority to search an automobile incident to lawful arrest (SITLA) pursuant to the precedent the Court established almost thirty years earlier in *New York v. Belton*. The Court acted on its conclusion that there *Belton* had evolved to provide an unjustifiable expansion of scope, creating an automatic and unrestricted search authority whenever the police arrested an occupant or recent occupant of an automobile. Noting that this automatic and unrestricted search authority reflected a disconnect from the original

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2 See Id. at 1719 (“[C]ircumstances unique to the vehicle context justify a search incident to a lawful arrest when it is ‘reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.’” (quoting *Thornton v. United States*, 541 U.S. 615, 632 (2004) (Scalia, J. concurring))).

3 Id.


5 See e.g. *Arizona v. Gant*, 129 S. Ct. 1710, 1720-21 (2009) (“Courts that have read *Belton* expansively are at odds regarding how close in time 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. The rule has thus generated a great deal of uncertainty, particularly for a rule touted as providing a ‘bright line.’” (citing 3 W. LaFave, *Search and Seizure* § 7.1(c), pp. 514-524 (4th ed. 2004))).
exigency rationale that justified the Belton holding, the Court concluded that Belton’s SITLA authority must be restricted to only those situations involving a genuine risk that the recent arrestee could gain access to the automobile immediately after arrest. Accordingly, Gant’s core holding is that Belton’s SITLA authority expires once the arrestee is secured in a manner that deprives her of any meaningful access to the automobile.

Had the Court’s analysis been limited to defining when such access terminated, little uncertainty would have been produced; Belton’s SITLA authority would apply to those limited situations where police had not yet eliminated a genuine risk of vehicle access by a recent arrestee. The probable cause requirement of the Fourth Amendment or some other established exception would then control the reasonableness of all other intrusions into the arrestee’s automobile: a warrantless probable cause search pursuant to the automobile exception to the warrant requirement; a cursory sweep of the interior of the automobile for weapons based on reasonable suspicion (when another individual such as a passenger would be afforded access to the vehicle); or an inventory of the vehicle after impound. Indeed, because Gant was secured in a police cruiser, the search fell outside the Court’s newly restrictive interpretation of Belton. Further, because the intrusion into Gant’s automobile fell

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6 See Id. at 1719 (To read Belton as authorizing a vehicle search incident to every recent occupant’s arrest would [] untether the rule from the justifications underlying the Chimel exception . . .

7 Id.

8 See e.g. Id. (“[T]he Chimel rationale authorizes police 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.”) (emphasis added).

9 See Id.

10 See Katz v. United States, 389 U.S. 347, 357 (1967) (“[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment-subject only to a few specifically established and well-delineated exceptions.”).


outside all of these other categories of reasonableness, the Court concluded that the police violated the Fourth Amendment when they seized evidence from Gant’s automobile.\textsuperscript{14}

The Court, however, did not limit its analysis to this continuum. Instead, writing for the majority, Justice Stevens introduced an apparently new standard—inspired by Justice Scalia’s concurrence in \textit{Thornton v. United States}\textsuperscript{15}—to render an intrusion of an automobile reasonable: “we also conclude that circumstances unique to the automobile context justify a search incident to arrest when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle.”\textsuperscript{16} Until \textit{Gant}, no such third rail quantum for assessing a reasonable search existed in Fourth Amendment jurisprudence.\textsuperscript{17} Instead, a two-prong quantum equation had become settled law: a full search is reasonable only when supported by probable cause; a cursory inspection is reasonable on a lower quantum of reasonable suspicion.\textsuperscript{18} Because the Court had established that the reasonableness of a SITLA was not based on either probable cause or reasonable suspicion, but instead on the exigency created by the lawful predicate

\textsuperscript{14} \textit{See Arizona v. Gant}, 129 S. Ct. 1710, 1722-23.

\textsuperscript{15} 541 U.S. 615 (2004) (Warrantless search conducted under the SITLA exception did not violate the Fourth Amendment, even though suspect had exited the vehicle prior to being stopped by police. The suspect was still found to have been a “recent occupant” of the vehicle, thus the SITLA was within the strictures of the \textit{Belton} exception.) \textit{Id}. at 623-24.

\textsuperscript{16} \textit{Arizona v. Gant}, 129 S. Ct. 1710, 1714 (2009). \textit{But see Thornton v. United States}, 541 U.S. at 624 n. 4 (“Whatever the merits of Justice Scalia’s opinion concurring in the judgment, this is the wrong case in which to address them. Petitioner has never argued that \textit{Belton} should be limited ‘to cases where it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle,’ [\textit{Id}. at 632 (Scalia, J. concurring)] nor did any court below consider Justice Scalia’s reasoning. \textit{See Pennsylvania Dept. of Corrections v. Yeskey}, 524 U.S. 206, 118 S. Ct. 1952, 141 L. Ed. 2d 215 (1998) (“‘Where issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them.’” (quoting \textit{Adickes v. S. H. Kress & Co.}, 398 U.S. 144, 147, n. 2 (1970))).”)

\textsuperscript{17} \textit{See Gant}, 129 S. Ct. at 1731 (Alito, J., dissenting).

\textsuperscript{18} \textit{See Memorandum from Charles Doyle, Senior Specialist, American law Division, Cong. Research Serv., Probable Cause, Reasonable Suspicion, and Reasonableness Standards in the Context of the Fourth Amendment and the Foreign Intelligence Surveillance Act (Jan. 30, 2006)} (“The reasonable suspicion standard is of relatively recent origin... under certain exigencies of time and place police officers may conduct a limited seizure and search with less than probable cause.” (citing \textit{Terry v. Ohio}, 392 U.S. 1 (1968)) available at http://www.fas.org/sgp/crs/intel/m013006.pdf) (last visited Aug. 10, 2011).
arrest, the admissibility of evidence seized during a SITLA turned on the legality of the predicate arrest and the scope of the subsequent search, not on any quantum of proof justifying the SITLA. Indeed, the core holding of Gant reflected this as it essentially constricted the scope of a SITLA.

The introduction of this apparent new quantum of “reasonable belief” in the continuum of reasonableness analysis has and will continue to produce inevitable uncertainty. This uncertainty will force lower courts to struggle to identify its significance. Indeed, lower court decisions have begun to evince several possible interpretations. First, “reasonable belief” may be a synonym for reasonable suspicion—a rational interpretation based on the similarity of the two terms. However, this interpretation renders a full search of an automobile reasonable based on a quantum of proof lower than probable cause, a result clearly in conflict with longstanding Fourth Amendment jurisprudence. Second, “reasonable belief” could be interpreted as a synonym for probable cause. This interpretation would certainly reconcile the decision with prior Fourth Amendment jurisprudence. However, such an interpretation ignores the use by the Court of a term distinct from traditional probable cause terminology following the Court’s recitation of pre-existing search authority. Thus, it is simply impossible to fully reconcile Gant with the pre-existing probable cause/reasonable suspicion continuum. Accordingly, there is a compelling argument in support of recognition of a new test for a limited category of reasonable searches of automobiles.

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19 See e.g. Arizona v. Gant, 129 S. Ct. 1710, 1716-17 (2009).
20 See Id. at 1714.
22 See generally Terry v. Ohio, 392 U.S. 1 (1968).
23 See e.g. Maryland v. Pringle, 540 U.S. 366, 371 (2003) (“[T]he substance of all the definitions of probable cause is a reasonable ground for belief of guilt, and that the belief of guilt must be particularized with respect to the person to be searched or seized.”) (emphasis added).
 Nonetheless, one unavoidable fact undermines this conclusion: the *Gant* Court’s reliance on Justice Scalia’s concurring opinion in *Thornton v. United States*.\(^24\) That case involved an extension of *Belton*’s auto-SITLA authority to the arrest of a recent vehicle occupant.\(^25\) Justice Scalia rejected the conclusion that the recent occupancy created a necessity analogous to that of *Belton*.\(^26\) Instead, he asserted that the search of Thornton’s automobile – and indeed even Belton’s automobile – was not based on a necessity to protect evidence from destruction, but instead on the relationship between the evidence and the nature of the offense for which the defendant was arrested.\(^27\) In support of this conclusion, Justice Scalia invoked the Court’s decision in *United States v. Rabinowitz*\(^28\), which endorsed a search for evidence related to the offense for which Rabinowitz was arrested even though the search extended to areas beyond his access in his office.\(^29\) Justice Scalia asserted that such a search is reasonable without a warrant because of the reasonable assumption that evidence related to the offense will be located in the area where the defendant was arrested:

> There is nothing irrational about broader police authority to search for evidence when and where the perpetrator of a crime is lawfully arrested. The fact of prior lawful arrest distinguishes the arrestee from society at large, and distinguishes a search for evidence of his crime from general rummaging. Moreover, it is not illogical to assume that evidence of a crime is most likely to be found where the suspect was apprehended.\(^30\)

\(^24\) 541 U.S. 615 (2004).

\(^25\) See *Id.* at 618.

\(^26\) See *Id.* at 625 (Scalia, J. concurring).

\(^27\) See *Id.* at 629-30 (Scalia, J. concurring).

\(^28\) 339 U.S. 56 (1950).

\(^29\) See *Gant*, 541 U.S. at 629 (Scalia, J. concurring).

\(^30\) *Id.* at 630 (Scalia, J. concurring).
If, as Justice Scalia asserts, the justification for such a search is not the necessity of protecting police from violence or protecting evidence from destruction, but instead the rational relationship between the arrest and the evidence, ‘reasonable belief’ could in fact mean probable cause. This, however, is not the proper interpretation. There is no question that probable cause must exist to justify the arrest.\footnote{See U.S. Const. amend. IV.} According to Justice Scalia, when that probable cause relates to an offense for which related evidence may be found at the scene of the arrest, the arrest itself justifies the subsequent search of that scene; the probable cause for the arrest effectively provides concurrent justification for the search.\footnote{See Gant, 541 U.S. at 630 (Scalia, J. concurring.)} The fact that Justice Scalia’s rationale is tethered back to \textit{Rabinowitz} bolsters this conclusion, because the search in \textit{Rabinowitz} did not take place in an automobile (with its reduced expectation of privacy potentially justifying a search based on a reduced quantum of proof), but instead in his office, a place certainly requiring probable cause to render a search reasonable. In short, ‘reasonable belief’ might not indicate a new standard of cause justifying a search of an automobile, but rather a link connecting probable cause for an arrest to a subsequent search of a recently occupied automobile for offense-related evidence. This article argues that interpreting \textit{Gant} in this way as a procedural tether is both logical and consistent with Fourth Amendment jurisprudence. Part II of the article will trace the evolution of the \textit{Belton} SITLA concept through the \textit{Gant} backlash. Part III will address the uncertainty triggered by \textit{Gant}’s ‘reasonable belief’ language through analysis of several illustrative post-\textit{Gant} decisions. Part IV will analyze the lineage of the ‘reasonable belief’ concept adopted by the \textit{Gant} Court. Part V will assess the impact of \textit{Gant} on in the interests of law enforcement and the individual citizen. Part VI will conclude that \textit{Gant}’s ‘reasonable belief’ concept is properly understood as a procedural tether between the probable cause to arrest and evidence related to that arrest, thereby actually expanding the scope of the \textit{Chimel} SITLA.
In support of this argument, the article will highlight why the alternative interpretation – that ‘reasonable belief’ indicates a new quantum of proof that renders the search of an automobile reasonable - is palpably hostile to the most fundamental principle of search law: pure evidentiary searches may only be reasonable when based on probable cause. Rather, the authority triggered by a ‘reasonable belief’ that evidence related to the arrest may be in the automobile links the probable cause for the arrest to that evidence. Accordingly, reasonable belief within the meaning of Gant is distinct both from the traditional authority granted by a search incident to a lawful arrest (SITLA) and the authority granted by probable cause and, therefore, has a completely different scope of applicability. Finally, viewing the Court's decision in Gant as a procedural tether – albeit one with necessary substantive overtones – is neither the hindrance to police procedure nor the detriment to the public good that it might appear to be at first glance.

Part II: From Belton to Gant.

A. Setting the Conditions: Belton, Search Incident to Lawful Arrest (SITLA), and the Gant Backlash

In 1984, the Supreme Court extended the longstanding authority for police to conduct a full search incident to lawful arrest to the interior compartment of an automobile following the arrest of the occupants. In Belton v. New York, a New York State Police Officer stopped a car travelling on the New York State Thruway for erratic driving. When the officer approached the vehicle, he detected an odor of marijuana coming from the passenger compartment. He also observed a brown paper bag on the

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35 Id.
36 Id. at 455.
37 Id.
floor in front of the passenger seat with “super gold” written on it. Based on this information, the officer ordered the four vehicle passengers to exit, placed them under arrest, and had them sit on the side of the road. No other officers were present at the scene. Without seeking consent, the officer proceeded to search the interior of the automobile, where he found a jacket belonging to the passenger Belton. He then searched the pockets of the jacket, in which he found cocaine. Belton was subsequently prosecuted for possession of cocaine.

Belton sought to suppress the cocaine as the fruit of an unreasonable search in violation of the Fourth Amendment (as applied to the state via the Fourteenth Amendment). Belton argued, and the New York Court of Appeals agreed, that the officer exceeded the scope of the SITLA authority triggered by the arrest of the vehicle occupants because the interior of the vehicle and the jacket were beyond the wingspan of the passengers at the time of the search. That argument relied on *Chimel v. California*, in which the Court held that it was reasonable to search within a recently arrested suspect’s “immediate control” in order to both preserve evidence by protecting it from possible destruction by the defendant and to discover weapons that might be used to harm the police and/or effectuate the suspect’s escape. In *Chimel*, the Court

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38 Id. at 456.
39 Id.
40 Id. at 457.
41 Id. at 456.
42 Id.
43 Id.
44 Id.
45 Id.
47 *Chimel v. California*, 395 U.S. 752, 762-63 (1969). (“When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to
held that extending the SITLA beyond the suspect’s wingspan exceeded the scope justified by the recent arrest and was therefore unreasonable absent an alternative justification.48

In Belton, the Court rejected the argument that the search of the auto interior and containers therein was unreasonable because it was beyond the wingspan of the arrested suspects.49 In an effort to establish a universally applicable standard of reasonableness in the automobile context, the Court effectively created the fiction that the interior of the automobile remained within the “lunging distance” of the recently arrested suspects.50 Of course, Belton was the ideal case for adopting this extension of the wingspan rule: outnumbered four to one, with the suspects seated near the vehicle, the arresting officer was at a distinct disadvantage.51 Nonetheless, there was no indication that any sense of exigency motivated his search, nor did the Court qualify the extension of the SITLA authority in any way. Instead, the decision seemed to grant police the automatic authority to conduct a general search of the interior of an automobile and containers in the interior following the arrest of a driver or other occupant.52

resist arrest or effect his escape . . . And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. 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.”). As noted throughout this article, this has become known as the “wingspan” rule.

48 See Id. at 768. (“The search here went far beyond the petitioner’s person and the area from within which he might have obtained either a weapon or something that could have been used as evidence against him. There was no constitutional justification, in the absence of a search warrant, for extending the search beyond that area. The scope of the search was, therefore, ‘unreasonable.’”).


50 See Id. at 460; See supra note 48 and accompanying text.


52 See Id. at 460 (“W]hen 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.”).
In Belton, the officer was arguably searching for narcotics – evidence related to the offense for which he had just arrested the suspects. However, SITLA has never been limited in scope to fruits related to the offense that triggers the search. From the inception of the exception, the apparent exigency of the arrested suspect’s potential access to evidence or weapons, thereby rendering the immediate search within the suspect’s wingspan reasonable, has created the authority for a SITLA. Accordingly, SITLA has always stood as an exception to not just the warrant requirement of the Fourth Amendment, but also the probable cause requirement. Because police are authorized to search for any evidence or contraband, there has never been a link between the scope of the SITLA and evidence related to the arrested offense.

So much has been apparent in the Court’s pre-Gant SITLA jurisprudence. Exigency, and not the discovery of evidence, became the predominant interest the exception advances. The Court therefore extended the exception beyond the auto occupant who has been arrested to the recent occupant of an automobile arrested after exiting the vehicle. In Thornton v. United States, the Court held reasonable the search of the suspect’s automobile following his arrest after he exited the vehicle. According to the Court, extending SITLA to such situations was consistent with its underlying exigency and protection of police foundation: forcing an officer into the “Hobson’s choice” of approaching a vehicle in which the suspect might be armed and dangerous

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53 Id. at 456.


56 See Id.


58 Id.

59 See Id. at 622.

60 A “Hobson’s choice” is a “take it or leave it” option in which a party is offered the free choice of only one option. According to the Court, “a Hobson’s choice is not a choice, whatever the reason for being Hobsonian.” Zelman v. Simmons-Harris, 536 U.S. 639, 652 (2002).
and preserving the authority to search the vehicle upon arrest, or allowing the suspect to exit the vehicle in order to gain tactical advantage but sacrificing the authority to search the vehicle following the arrest was simply untenable.\footnote{Thornton, 541 U.S. at 622}

Following Thornton, the only real uncertainty related to the automobile SITLA authority was how proximate the exiting driver must be to the vehicle before the authority dissipates.\footnote{See, United States v. Dorsey, 418 F.3d 1038 (9th Cir. 2005) (upholding automobile search conducted after the arrestee had been handcuffed and placed in a patrol car); United States v. Barnes, 374 F.3d 601 (8th Cir. 2004) (same).} Accordingly, the admissibility of evidence seized from the interior compartment of an automobile or a container therein following the lawful arrest of a driver or occupant became a genuine article of faith. Lawful arrest was the \textit{sine qua non} for admissibility. Other factors related to the arrest were simply irrelevant, including the nature of the offense, whether the offense was one traditionally associated with violence, the relative probability or improbability that evidence related to the offense might be in the vehicle, the ability of the suspect to gain access to the vehicle at the time of the search, the number of officers at the scene, the number of suspects, or the location of the vehicle. In short, an arrest for a minor traffic infraction of the proverbial 80-year-old grandmother triggered the authority to search the entire interior compartment of her automobile, even if she was secured in the back of the arresting officer’s police cruiser with numerous other officers on the scene.

\textbf{B. Arizona v. Gant\footnote{129 S. Ct. 1710 (2009).} and the End of the Blank Check}

The Court’s \textit{Gant} decision thus rested on the background of the apparently unlimited search authority triggered by the arrest of an automobile occupant or recent occupant.\footnote{See Id. at 1717-18.} In many ways, \textit{Gant} provided as compelling a set of facts to revisit the
blank check the automobile SITLA had evolved into as *Belton* did to establish the exception. Unlike the *Belton* situation of an outnumbered officer who discovered evidence somewhat related to the offense that provided the cause for the arrest, *Gant* involved a situation where neither the search for evidence nor the protection of the officers seemed to justify the automobile search.\(^{65}\)

In *Gant*, police arrested the suspect for the offense of driving on a suspended license.\(^{66}\) Following his arrest, Gant was secured in the back seat of a locked police cruiser.\(^{67}\) Furthermore, several other police cruisers and officers were present at the scene.\(^{68}\) Nonetheless, the police proceeded to search the interior of Gant’s automobile, which he had driven up to his residence immediately prior to his arrest,\(^{69}\) and discovered and seized evidence unrelated to the offense of driving on a suspended license.\(^{70}\) Prior to his trial on charges of possession of a weapon and possession of drug paraphernalia, Gant moved to suppress the evidence discovered in his car.\(^{71}\) The trial court first rejected the state’s assertion that the police acted pursuant to probable cause that the evidence would be found in the car thereby triggering the automobile exception to the warrant requirement (this was a critical conclusion, for it eliminated the only alternative plausible exception to render the search of the car reasonable).\(^{72}\) However,

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\(^{65}\) *Id.* at 1719 ("Neither the possibility of access nor the likelihood of discovering offense-related evidence authorized the search in this case.").

\(^{66}\) *Id.* at 1714.

\(^{67}\) *Id.*

\(^{68}\) *Id.* at 1719.

\(^{69}\) *Id.* at 1715.

\(^{70}\) *Id.*

\(^{71}\) *Id.*

\(^{72}\) *Id.*
the trial court then applied the *Belton/Thornton* rule and concluded the search was reasonable because Gant had been lawfully arrested after exiting his vehicle.\(^73\)

Gant appealed the issue to the Arizona Supreme Court, which ultimately rejected the trial court’s application of the SITLA exception and reversed Gant’s conviction.\(^74\) The U.S. Supreme Court summarized the Arizona Supreme Court’s rationale as follows:

> [T]he Arizona Supreme Court concluded that the search of Gant’s car was unreasonable within the meaning of the Fourth Amendment. The court’s opinion discussed at length our decision in *Belton*, which held that police may search the passenger compartment of a vehicle and any containers therein as a contemporaneous incident of an arrest of the vehicle’s recent occupant. The court distinguished *Belton* as a case concerning the permissible scope of a vehicle search incident to arrest and concluded that it did not answer “the threshold question whether the police may conduct a search incident to arrest at all once the scene is secure.” Relying on our earlier decision in *Chimel*, the court observed that the search-incident-to-arrest exception to the warrant requirement is justified by interests in officer safety and evidence preservation. When “the justifications underlying *Chimel* no longer exist because the scene is secure and the arrestee is handcuffed, secured in the back of a patrol car, and under the supervision of an officer,” the court concluded, a “warrantless search of the arrestee’s car cannot be justified as necessary to protect the officers at the scene or prevent the destruction of evidence.” Accordingly, the court held that the search of Gant’s car was unreasonable.\(^75\)

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\(^{73}\) *Id.*

\(^{74}\) *Id.* at 1716.

\(^{75}\) *Id.* at 1715-16.
The Supreme Court then noted that the Arizona Supreme Court dissenting justices rejected the majority’s consideration of any *actual Chimel* justification as the basis for the reversal.\(^76\) For the dissent, such consideration of actual exigency was inconsistent with the *Belton/Thornton* SITLA rule.\(^77\) In essence, they understood SITLA as an automatic exception to the warrant and probable cause requirement, regardless of how attenuated from the original *Chimel* SITLA rationale a particular application might be.\(^78\) However, the dissent also acknowledged that the bright line *Belton* rule had become difficult to justify in cases such as Gant’s, and therefore joined in the call for reconsideration by the U.S. Supreme Court.\(^79\) That request landed on a receptive Court, which noted in its opinion “[T]he chorus that has called for us to revisit *Belton* includes courts, scholars, and Members of this Court who have questioned that decision’s clarity and its fidelity to Fourth Amendment principles. We therefore granted the State’s petition for *certiorari*.\(^80\)

In an opinion authored by Justice Stevens for a five Justice majority, the U.S. Supreme Court sustained the decision of its Arizona counterpart, in large measure adopting the rationale of that court.\(^81\) Focusing on the original exigency justification upon which *Belton* was built, the Court rejected a broad reading of *Belton*.\(^82\) Instead, it limited the application of *Belton’s* SITLA authority to those situations in which a recent arrestee could legitimately gain access to the interior of the automobile:

\(^{76}\) *Id.*

\(^{77}\) *Id.* at 1716.

\(^{78}\) *See Id.*

\(^{79}\) *See Id.*

\(^{80}\) *Id.*

\(^{81}\) *Id.* at 1724.

\(^{82}\) *Id.* at 1713.
This Court rejects a broad reading of Belton that would permit a vehicle search incident to a recent occupant’s arrest even if there were no possibility the arrestee could gain access to the vehicle at the time of the search. The safety and evidentiary justifications underlying Chimel’s exception authorize a vehicle search only when there is a reasonable possibility of such access.83

Had the Court stopped there, Gant would have been nothing more than a clarification on the applicability of the Belton rule. However, in a separate concurring opinion, Justice Scalia interjected a somewhat perplexing new element into the meaning of the decision. Drawing from his concurring opinion in Thornton, Scalia added a new dimension to the trigger for a Belton SITLA, a dimension that migrated to the Gant holding:

Although it does not follow from Chimel, circumstances unique to the automobile context also justify a search incident to a lawful arrest when it is “reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.”84

Thus, Gant qualified Belton, and then ostensibly modified its own qualifier. The decision qualified Belton by limiting it to situations where an arrestee retains genuine access to the automobile – ostensibly irrespective of the nature of the offense for which the suspect was arrested.85 However, Justice Scalia then provided an exception to this qualifier – even when access to the vehicle has been eliminated by police control, a

83 Id.

84 Id. at 1719.

85 Id. (“[T]he Chimel rationale authorizes police 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.”).
search is still reasonable whenever the police have a ‘reasonable belief’ that evidence related to the crime might be in the vehicle.\textsuperscript{86}

This reasonable belief modifier would have been relatively unremarkable had Justice Scalia utilized slightly different language. Probable cause would have been the easiest terminology to reconcile with existing jurisprudence. Pursuant to the longstanding automobile exception to the warrant requirement, a search of an automobile based on probable cause is reasonable without first obtaining a warrant.\textsuperscript{87} This exception operates independently of the \textit{Belton} SITLA.\textsuperscript{88} Accordingly, even if the recent occupant is secured in a manner that eliminates access to the automobile, police with probable cause that evidence related to the offense for which the occupant was arrested may search for that evidence anywhere in the automobile the probable cause points.\textsuperscript{89}

Reasonable suspicion would have been less understandable, but would have at least been a term well established in Fourth Amendment jurisprudence and practice.\textsuperscript{90} Reasonable suspicion has never justified a full evidentiary search.\textsuperscript{91} Instead, pursuant to the landmark decision in \textit{Terry v. Ohio}\textsuperscript{92}, it justifies a “cursory” search for the much

\textsuperscript{86} \textit{Id.} (“[C]ircumstances unique to the vehicle context [also] justify a search incident to a lawful arrest when it is ‘reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.’” (quoting \textit{Thornton v. United States}, 541 U.S. 615, 632 (2004) (Scalia, J. concurring)).


\textsuperscript{90} \textit{See Terry v. Ohio} 392 U.S. 1 (1968) (authorizing limited cursory searches where police harbored reasonable suspicion — rather than probable cause — of the presence of weapons).

\textsuperscript{91} \textit{See Id.} at 25-26 (“A search for weapons in the absence of probable cause to arrest, however, must, like any other search, be strictly circumscribed by the exigencies which justify its initiation. Thus it must be limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby, and may realistically be characterized as something less than a ‘full’ search, even though it remains a serious intrusion.” (citing \textit{Warden v. Hayden}, 387 U.S. 294, 310 (1967) (Fortas, J. concurring))).

\textsuperscript{92} 392 U.S. 1 (1968).
more limited purpose of ensuring the suspect is not armed and dangerous.\textsuperscript{93} This \textit{Terry} “pat down” was extended to the interior of an automobile in \textit{Michigan v. Long},\textsuperscript{94} where the Court held that a cursory search of the interior of an automobile is reasonable whenever a police officer has reasonable suspicion there may be a weapon within ready access of a passenger allowed to re-enter the vehicle.\textsuperscript{95} However, because Justice Scalia used the term “reasonable belief” in relation to the search for evidence related to the offense for which the vehicle occupant was arrested, it is difficult to reconcile that term with the more limited scope of \textit{Michigan v. Long}. Nonetheless, had the Court substituted ‘suspicion’ for ‘belief’, it would have at least invoked a quantum of proof already known to the law.

The Court explicitly acknowledged that the automobile exception to the warrant requirement coupled with the \textit{Terry} search of an automobile exception provided the alternate justifications of the search for evidence or the protection of officer safety.\textsuperscript{96} The Court also concluded that these alternate search justifications provided sufficient authority to meet the legitimate needs of law enforcement:

This Court is unpersuaded by the State’s argument that its expansive reading of \textit{Belton} correctly balances law enforcement interests with an arrestee’s limited privacy interest in his vehicle. The State seriously undervalues the privacy interests at stake, and it exaggerates both the clarity provided by a broad reading of \textit{Belton} and its importance to law enforcement interests. A narrow reading of \textit{Belton} and \textit{Thornton}, together with this Court’s other Fourth Amendment decisions, \textit{e.g.}, \textit{Michigan

\textsuperscript{93} See \textit{Terry v. Ohio} 392 U.S. 1 (1968) (authorizing limited cursory searches where police harbored reasonable suspicion — rather than probable cause — of the presence of weapons).

\textsuperscript{94} 463 U.S. 1032, 1036 (1983).

\textsuperscript{95} See \textit{Id.} at 1050.

\textsuperscript{96} See \textit{Gant}, 129 S. Ct. at 1721.
v. Long, and United States v. Ross, permit an officer to search a vehicle when safety or evidentiary concerns demand.

Indeed, as articulated, the holding of the case seems to indicate that these are the exclusive justifications for search the automobile of a recently arrested occupant:

_Held:_ 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.

However, drawing from Justice Scalia’s concurring opinion in _Thornton v. United States_, the Court added what appears to be another justification to search the car of an arrested recent occupant, applicable even when the suspect is secure, terminating Belton’s SITLA authority:

>[F]ollowing the suggestion in Justice Scalia’s opinion concurring in the judgment in that case, we also conclude that circumstances unique to the automobile context justify a search incident to arrest when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle.

The Court did not, however, explain what it meant by the term ‘reasonable belief’ it adopted from Justice Scalia’s Thornton concurrence. It therefore would be tempting to conclude that this term was merely a synonym for probable cause - that the Court

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99 _Gant_, 129 U.S. at 1713.
100 _Id._
102 _Gant_, 129 U.S. at 1714.
merely highlighted the alternate existing search justification “unique” to the automobile pursuant to the Ross auto exception to the warrant requirement. However, Justice Scalia’s concurring opinion in Gant exacerbates the uncertainty related to the meaning of ‘reasonable belief’, the relevant portion of which provides:

I would hold that a vehicle search incident to arrest is ipso facto “reasonable” only when the object of the search is evidence of the crime for which the arrest was made, or of another crime that the officer has probable cause to believe occurred.¹⁰³

There are obviously two meanings that can be attributed to this explanation of automobile search authority. Consistent with the existing range of exceptions to the warrant requirement, the reference to probable cause could qualify the two distinct search objectives he addresses: search for evidence related to the arrested crime, or for any other evidence in the automobile. However, it is also plausible to read this portion of his opinion as distinguishing between these two search objectives, indicating that probable cause is required only when the object of the search is evidence unrelated to the crime for which the suspect was arrested. This latter interpretation seems consistent with the majority’s emphasis that it relied on Justice Scalia’s Thornton concurrence to conclude a search for evidence related to the crime of arrest is justified when the police have a ‘reasonable belief’ it will be in the automobile.¹⁰⁴

One conclusion seems indisputable: had the Court intended to emphasize the existing Ross auto exception search authority, it is perplexing why the opinion used the term ‘reasonable belief’ instead of probable cause. When coupled with Justice Scalia’s less than clear discussion of the range of auto search justifications, understanding this new term injected into the automobile search equation requires analysis that drills

¹⁰³ Gant, 129 U.S. at 1725 (Scalia, J., concurring).
¹⁰⁴ See Id. at 1719.
deeper than the opinion itself to its apparent origin: *United States v. Rabinowitz*\(^{105}\) and the Court’s early clarification of the SITLA exception.

**Part III: Lower Court Uncertainty: Reasonable Suspicion, Probable Cause, or Something New?**

“Reasonable belief” has become a “nebulous standard” in continuing Fourth Amendment jurisprudence;\(^{106}\) as Justice Alito correctly predicted, this new standard is “virtually certain to confuse law enforcement officers and judges for some time to come.”\(^{107}\) Not surprisingly, lower courts wrestling with the ultimate meaning of “reasonable belief” have come to a myriad of conclusions. Some courts have determined that, outside of traffic violations, once a person is arrested and outside the vehicle, *Gant* allows the police to search the vehicle for further evidence of the crime for which he was arrested.\(^{108}\) Others see *Gant* as providing a *per se* test for “reasonable belief” based on the nature of the offense for which a suspect is arrested.\(^{109}\) In *Reagan v. United States*, the court found that ‘reasonable belief’ requires a court to determine, based on common sense and the totality of the circumstances, whether the police had cause to believe there would be evidence of the offense of the arrest in the vehicle.\(^{110}\) In *United States v. Page*,\(^{111}\) the Fourth Circuit made a similar determination, relying

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\(^{105}\) 339 U.S. 56 (1950).


\(^{107}\) *Gant*, 129 S. Ct. at 1726 (Alito, J., dissenting).


\(^{110}\) Id.

however on the presence of other evidence to justify the search. As the Page court observed,

it would appear that the majority in Gant distinguishes between offenses for which it is unlikely that the arrestee’s vehicle contains relevant evidence, i.e., traffic violations, and offenses for which the recovery of such evidence is likely. The Court in Gant specifically cited drug offenses as illustrative of the exception to the rule announced. Accordingly, under the rationale in Gant, the seizure of a quantity of marijuana from the defendant, standing alone, justified the search of the passenger compartment of his vehicle.

This position seems both logical and in accordance with the Court’s annunciation in Gant.

Perhaps “reasonable belief” is a twin sibling of the lower evidentiary standard of “reasonable suspicion”, as espoused by the Colorado courts. Some courts have “concluded that by using language like ‘reasonable to believe’ and ‘reasonable basis to believe,’ the Supreme Court intended a degree of articulable suspicion commensurate

112 Id. at 654 (seizure of drugs from the person of the defendant after he was stopped in the vehicle justified search of vehicle for drugs); See also Hill v. State, 303 S.W.3d 863, 875-76 (Tex. App. 2009) (drugs in plain view in vehicle justified search); State v. Snapp, 153 Wn. App. 485, 219 P.3d 971, 976-77 (Wash. App. 2009) (drugs in plain view and defendant's movements to hide something in car gave police reasonable belief to search for drugs in vehicle).

113 Id.; Compare United States v. Joy, 336 Fed. App’x. 337 (4th Cir. 2009) (drug offenses are types of offenses for which it may be reasonable to believe evidence relating to the crime may be located in the vehicle) and United States v. Oliva, 2009 U.S. Dist. LEXIS 57293 (S.D. Tex. July 1, 2009) (police could reasonably have believed evidence of defendant’s arrest for DWI could be found in the vehicle) with United States v. Meggison, 340 Fed. App’x. 856 (4th Cir. 2009) (arrest for domestic abuse did not justify search) and United States v. Majette, 326 Fed. App’x. 211 (4th Cir. 2009) (arrest for suspended operator’s license did not warrant search).

114 See Gant, 129 S. Ct. at 1719. (“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. But in others, 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.” (emphasis added) (internal citations omitted)); See also United States v. Matias-Maestres, 738 F. Supp. 2d 281, 294 n.3 (D.P.R. 2010) (police could not have reasonable believed evidence of driver’s DUI would be found on passenger).
with that sufficient for limited intrusions like investigatory stops.”115 In *Perez v. People*,116 the Colorado Supreme Court found a direct link between “reasonable belief” and the type of reasonable suspicion found in *Terry v. Ohio*117 “a reasonable belief to conduct such a search exists when there is a ‘degree of articulable suspicion commensurate with that sufficient for limited intrusions like investigatory stops.’”118

To support the assumption, it is noteworthy to observe that *Terry*, which gave life to “reasonable suspicion”, seemed to suggest in its opinion that the two were indeed part and parcel of the same concept:

> [T]here must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has *reason to believe* that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime . . . [T]he issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.119

This rationale has repeatedly fallen on a receptive audience in the Colorado courts, which are much more in tune with the notion that “reasonable belief” equates to “reasonable suspicion”:

> The Court's use of phrases like “reasonable to believe” and “reasonable basis to believe” is a further indication that it intends some degree of

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115 *People v. McCarty*, 2010 Colo. LEXIS 361, 16-17 (Colo. 2010); See also *People v. Chamberlain*, 229 P.3d 1041 (Colo. 2010)

116 231 P.3d 957 (Colo. 2010).


119 *Terry v. Ohio*, 392 U.S. 1, 27 (1968) (emphasis added); See also *Adams v. Williams*, 407 U.S. 143, 146 (1972) (“So long as the officer is entitled to make a forcible stop, and has reason to believe that the suspect is armed and dangerous, he may conduct a weapons search limited in scope to this protective purpose.”) (emphasis added).
articulable suspicion, a standard which it has previously acknowledged in its Fourth Amendment jurisprudence as meriting official intrusion. While this particular language is often used synonymously with probable cause, in light of the automobile exception, which already provides an exception to the warrant requirement whenever police have probable cause to believe an automobile contains evidence of a crime, a requirement of probable cause in this context would render the entire second prong of the Gant search-incident-to-arrest exception superfluous. For this reason, and because the majority at several points requires only a reasonable belief that evidence “might” be found, it seems more likely that the Court intended a lesser degree of suspicion commensurate with that sufficient for limited intrusions, like investigatory stops.\textsuperscript{120}

While determining what “reasonable belief” is has been met with a wealth of uncertainty and a lack of clarity, determining what “reasonable belief” is not has been less difficult. The idea that Gant’s reasonable belief justification (the “evidentiary justification”) under an auto-related SITLA is somehow synonymous with the probable cause requirement of the automobile exception to the warrant requirement has been dismissed by a number of lower court decisions, and to Justice Alito was a hair lip of the Gant majority opinion.\textsuperscript{121} In fact, as observed by the First Circuit, “every circuit that has considered the issue to date has either concluded or assumed that the auto exception survived under Gant . . . the auto exception requires probable cause.\textsuperscript{122} But

\textsuperscript{120} People v. Chamberlain, 2010 Colo. LEXIS 360, 9-10 (Colo. 2010) (emphasis added); \textit{but see State v. Baker}, 2010 UT 18, 36 (Utah 2010) (“[A]n objectively reasonable belief that the suspect is armed and dangerous [ ] does not create automatic authorization for officers to conduct a [Terry] frisk.”).

\textsuperscript{121} See \textit{Id.} at 1731 (Alito, J., dissenting) (“Why [ ] is the standard for this type of evidence-gathering search ‘reason to believe’ rather than probable cause?”).

the *Gant* evidentiary justification only requires a ‘reasonable basis. These distinctions make a difference.”

**Part IV: Thornton and the Birth of ‘Reasonable Belief’**

As the *Gant* majority notes, Justice Scalia’s concurring opinion in *Thornton v. United States* first introduced the concept of ‘reasonable belief’ into the auto SITLA equation. In *Thornton*, a police officer observed suspicious behavior by the driver of an automobile (Thornton). The officer followed the suspect to a parking lot. Unlike *Belton*, the police officer did not immediately approach the vehicle. Instead, he waited for the suspect to exit the vehicle. The officer then approached Thornton and asked him several investigatory questions. His suspicion aroused that the suspect might be armed and dangerous, the officer performed a *Terry* search of the suspect, which led to the discovery of narcotics on Thornton’s person. At that point, Thornton was placed under arrest, and the officer searched the interior compartment of Thornton’s vehicle, in which he found a firearm.

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123 United States v. Polanco, 634 F. 3d 39, 42 (1st Cir. 2011).
125 *Id.* at 632 (Scalia, J. concurring) (“I would [] limit Belton searches to cases where it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.” (emphasis added)).
126 *Id.* at 617 (“Officer Deion Nichols of the Norfolk, Virginia, Police Department, who was in uniform but driving an unmarked police car, first noticed petitioner Marcus Thornton when petitioner slowed down so as to avoid driving next to him.”).
127 *Id.* at 618.
128 *Id.*
129 *Id.*
130 *Id.*
131 *Id.*
132 *Id.*
Thornton sought to suppress the firearm as fruit of an unreasonable search. The government responded that the search was justified pursuant to Belton's SITLA exception. The evidence was admitted and Thornton convicted. The case reached the Supreme Court on the question of whether a Belton SITLA applied when the police arrest an automobile occupant after the occupant exits the vehicle. Accordingly, it held that Belton applied not only when the suspect was arrested in the automobile, but also to the arrest of recent automobile occupants.

Concurring in the judgment, Justice Scalia expressed his overall dissatisfaction with the automobile SITLA exception. Essentially laying the groundwork for Gant, he emphasized that Belton had become a blank check allowing the police to search automobiles after the arrest of an occupant – and now even a recent occupant – irrespective of the presence of factors related to the original rationale for the SITLA exception (risk that evidence will be destroyed or that the suspect will be able to access a weapon to endanger the police). For Justice Scalia, the issue was not whether the

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133 Id.
134 Id. at 618-19.
135 Id. at 619.
136 Id.
137 Id. at 621-22 (“[U]nder the strictures of petitioner’s proposed ‘contact initiation’ rule, officers who do so would be unable to search the car’s passenger compartment in the event of a custodial arrest, potentially compromising their safety and placing incriminating evidence at risk of concealment or destruction. The Fourth Amendment does not require such a gamble.”)
138 Id. at 622.
139 Id. at 628-29 (Scalia, J., concurring) (“The consequence of Belton’s bright line rule is that ‘we have now abandoned our constitutional moorings and floated to a place where the law approves of purely exploratory searches of vehicles during which officers with no definite objective or reason for the search are allowed to rummage around in a car to see what they might find.’” (citing United States v. McLaughlin, 170 F. 3d 889, 894 (Trott, J., concurring))).
140 Id at 631 (Scalia, J., concurring) (“Belton cannot reasonably be explained as a mere application of Chimel. Rather, it is a return to the broader sort of search incident to arrest that we allowed before Chimel — limited, of
suspect was arrested in the automobile or after having exited the automobile; the issue was whether the facts supported any plausible exigency justifying application of the SITLA exception. In short, Justice Scalia rejected the “bright line” Belton rule that the presence of the automobile in the equation ipso facto created an exigency justifying a SITLA, no matter how minor the offense of arrest might be, or how secure the arrestee might be.

Justice Scalia then articulated his alternative vision for the proper tailoring of the Belton automobile SITLA exception. Unsurprisingly, this focused on the original SITLA exception, and the exigencies that justified dispensing with the warrant and probable cause requirements for conducting a search following arrest. As it originally did in Chimel v. California, the Court endorsed the SITLA based on the historic practice of police conducting a search of a suspect’s person in order to seize any evidence in the suspect’s possession (thereby protecting it from destruction) and to ensure the suspect did not have a secreted weapon that could endanger the police. In Chimel, the Court concluded that any intrusion resulting from the SITLA was incidental to the already more substantial intrusion of arrest. Accordingly, so long as the arrest was lawful, the search incident produced no further offense to the interests protected by the Fourth Amendment.

Chimel was, however, a double-edged sword. In Chimel, following Chimel’s arrest, the police searched Chimel, the drawers and closets in the bedroom where he

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141 Id. at 625-28 (Scalia, J., concurring).
142 See Id. at 625 (Scalia, J., concurring).
143 Id. at 632 (Scalia, J., concurring).
146 Id. at 776.
was arrested, and other areas of the house in which he was arrested.\textsuperscript{147} The Court held that the search of Chimel and the area within his immediate control (often referred to as the “lunging” distance or the “wingspan” rule) was reasonable, for that was the area from which Chimel might be able to gain access to a weapon or evidence.\textsuperscript{148} However, the Court also held that the police exceeded the reasonable scope of the SITLA when they searched areas outside the room in which he was arrested because there was simply no exigency justifying such an expansive scope.\textsuperscript{149}

Justice Scalia’s criticism of the \textit{Belton} automobile variant of the SITLA focused on the exigency foundation. More specifically, Justice Scalia attacked the most troubling aspect of the \textit{Belton} decision: the Court’s holding that application of the SITLA exception to an automobile would not depend on a case-by-case assessment of the presence of the \textit{Chimel} exigency considerations, but instead would be applied as a “bright line” rule.\textsuperscript{150} In short, Justice Scalia took issue with the fact that \textit{Belton} had created an automatic search authority for automobiles that applied even in the absence of the slightest exigency justifying the search, a concern also highlighted by Justice O’Connor in \textit{Thornton} when she noted in her concurrence that “lower court decisions seem now to treat the ability to search a vehicle incident to the arrest of a recent occupant as a police entitlement rather than as an exception justified by the twin rationales of \textit{Chimel}.”\textsuperscript{151}

Justice Scalia first noted the obvious: that the bright line authority to conduct an automobile SITLA established in \textit{Belton} had become totally untethered from the original \textit{Chimel} justifications:

\begin{itemize}
  \item \textsuperscript{147} \textit{Id.} at 754.
  \item \textsuperscript{148} \textit{Id.} at 768.
  \item \textsuperscript{149} \textit{Id.}
  \item \textsuperscript{151} \textit{Id.} at 624 (O’Connor, J., concurring).
\end{itemize}
As one judge has put it: “[I]n our search for clarity, we have now abandoned our constitutional moorings and floated to a place where the law approves of purely exploratory searches of vehicles during which officers with no definite objective or reason for the search are allowed to rummage around in a car to see what they might find.” McLaughlin, supra, at 894 (Trott, J., concurring). I agree entirely with that assessment.152

Instead of an outright rejection of this expansive application of Belton, Justice Scalia took a different tack: he offered an alternate justification for the scope of the Belton search authority:

If Belton searches are justifiable, it is not because the arrestee might grab a weapon or evidentiary item from his car, but simply because the car might contain evidence relevant to the crime for which he was arrested.153

This one sentence opened a new front in the automobile search battle that would evolve and culminate with the Gant decision. It also sowed the seed for the ‘reasonable belief’ justification adopted by the Gant majority.

Justice Scalia’s explanation of this alternate theory of Belton’s automobile search authority is essential to understanding the meaning of ‘reasonable belief’ adopted by the Gant majority. According to his Thornton concurrence, courts had historically endorsed the search for evidence related to the crime of arrest, indicating that such searches had always been considered reasonable: “[N]umerous earlier authorities support this approach, referring to the general interest in gathering evidence related to the crime of arrest with no mention of the more specific interest in preventing its concealment or destruction.”154 Furthermore, endorsement of these searches had

152 Id. at 628-29 (Scalia, J., concurring).
153 Id. at 629 (Scalia, J., concurring).
154 Id.
nothing to do with concerns over the safety of police officers or the risk the evidence might be destroyed – the two foundational pillars of the Chimel SITLA. It is therefore clear that Justice Scalia considered the search for evidence related to the crime of arrest justified on a wholly independent basis from the SITLA Belton extended to automobiles. Because this search justification is not contingent on the SITLA exigency concerns, it is both automatic and broader in scope than Justice Scalia’s conception of a legitimate SITLA, a fact he had no difficulty endorsing:

There is nothing irrational about broader police authority to search for evidence when and where the perpetrator of a crime is lawfully arrested. The fact of prior lawful arrest distinguishes the arrestee from society at large, and distinguishes a search for evidence of his crime from general rummaging. Moreover, it is not illogical to assume that evidence of a crime is most likely to be found where the suspect was apprehended.\(^{155}\)

This was not intended to suggest that Chimel’s SITLA authority was invalid. Indeed, Justice Scalia emphasized that “Chimel’s [auto SITLA exception which focuses on] concealment or destruction of evidence also has historical support.”\(^{156}\) Instead, his discussion of evidentiary searches related to the crime of arrest was clearly intended to offer a more logical rationale for the expansive application of Chimel to the automobile context. Again, from his opinion:

\[
\text{[i]f we are going to continue to allow Belton searches on \textit{stare decisis} grounds, we should at least be honest about why we are doing so. Belton cannot reasonably be explained as a mere application of Chimel. Rather, it}
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\(^{155}\) Id. at 630.

\(^{156}\) Id.
is a return to the broader sort of search incident to arrest that we allowed before Chimel . . . 157

In using the term ‘reasonable belief’, the Gant Court ultimately embraced the ‘honesty’ Justice Scalia demanded. Accordingly, ‘reasonable belief’ can only be understood in the broader context of the type of evidentiary search Justice Scalia invoked in support of the continued validity of Belton – not a variant of a Chimel search, but instead an evidentiary search rendered reasonable by some alternate justification.

This analysis leads to the Supreme Court’s decision in United States v. Rabinowitz. 158 In Rabinowitz, police officers suspected the defendant of unlawfully selling forged postage stamps. 159 Based on the fact that he had sold such stamps to an undercover officer, the police obtained a warrant for his arrest. 160 However, they did not obtain a search warrant. 161 Rabinowitz was subsequently arrested at his place of business – an office. 162 Immediately following his arrest, police searched Rabinowitz and his office, including his desk, safe, and file cabinets, and seized 573 forged stamps. He was indicted for possessing and concealing the stamps so seized and for selling the four that had been purchased. The seized stamps were admitted in evidence over his objection, and he was convicted on both counts. 163 The Court of Appeals reversed, concluding that the search was unreasonable solely because the police had a prior

157 Id. at 639 (Scalia, J., concurring).
159 Id. at 57.
160 Id. at 57-58.
161 Id. at 59.
162 Id. at 58.
163 Id. at 59.
opportunity to obtain a search warrant (a conclusion subsequently rejected by the Supreme Court, but not relevant to this discussion).

The Supreme Court determined that the search conducted contemporaneously with Rabinowitz’s arrest was reasonable and reversed the Court of Appeals’ decision. The Court emphasized, however, that “[w]hat is a reasonable search is not to be determined by any fixed formula . . . The recurring questions of the reasonableness of searches must find resolution in the facts and circumstances of each case.” Although it decided Rabinowitz prior to its seminal SITLA decision in Chimel v. California, the Court nonetheless focused on the area within the arrestee’s immediate control. The Court concluded that the nature of the business office justified the conclusion that the entire room was within Rabinowitz’s immediate control, and therefore held the entire search fell within the SITLA exception.

While the search of Rabinowitz himself certainly met the notion of an area within his immediate control, the search of his file cabinet (where the stamps were found) is almost impossible to square with this limitation. The Court was unconcerned with the distinction, indicating that its conception of “immediate control” was more expansive.

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164 Id.

165 In reaching its conclusion, the Court relied on a series of cases, including Weeks v. United States, 232 U.S. 383, 392 (1914) (“[I]t is reasonable] to search the place where the arrest is made in order to find and seize things connected with the crime as its fruits or as the means by which it was committed.”); and Agnello v. United States, 269 U.S. 20, 30 (1925) (“The right without a search warrant contemporaneously to search persons lawfully arrested while committing crime and to search the place where the arrest is made in order to find and seize things connected with the crime as its fruits or as the means by which it was committed, as well as weapons and other things to effect an escape from custody, is not to be doubted.”).

166 Id. at 63.


168 See Rabinowitz 339 U.S. at 63 (1950).

169 Id. at 64.

170 Id. at 60. (“[N]o one questions the right, without a search warrant, to search the person after a valid arrest. The right to search the person incident to arrest always has been recognized in this country and in England. Where one had been placed in the custody of the law by valid action of officers, it was not unreasonable to search him.” (citing Weeks v. United States, 232 U.S. 383, 392 (1914))).
than that which would be endorsed by *Chimel* decades later. Indeed, the ability to gain ready access to the file cabinet seemed far less significant in *Rabinowitz* than did the assumption that evidence of crime is often found in the immediate area of the arrest.

Despite invoking the SITLA doctrine to justify the search in *Rabinowitz*, it seems relatively clear the Court viewed the scope of that authority quite differently than did the Court in the subsequent *Chimel* decision. In *Rabinowitz*, the Court was obviously willing to endorse a scope that included the entire office. The rationale for this expansive scope was clearly based not on the type of exigency presumptively associated with arrest, but instead on the mere fact that the offense was committed in the location of arrest, with a likelihood that evidence for that type of offense could be found in that location. Indeed, the Court noted the authority for the search was based on both denial of the means to effect escape and the traditionally accepted goal of discovering evidence of the offense:

> The right “to search the place where the arrest is made in order to find and seize things connected with the crime as its fruits or as the means by which it was committed” seems to have stemmed not only from the acknowledged authority to search the person, but also from the longstanding practice of searching for other proofs of guilt within the control of the accused found upon arrest. It became accepted that the premises where the arrest was made, which premises were under the control of the person arrested and where the crime was being committed,

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171 *Chimel* only authorizes such contemporaneous searches in order to seize weapons or other evidence that may be used to effect an escape, or to prevent the destruction of evidence. See *Chimel v. California*, 395 U.S. 752, 764 (U.S. 1969).

172 *Id.*

173 *Id.*

174 *Id.*
were subject to search without a search warrant. Such a search was not “unreasonable.”

Including the “premises where the arrest was made” within the scope of SITLA was therefore based on a reasonable linkage between the nature of the offense and the type of evidence searched for and seized. The Court cited another example to emphasize this point:

In *Marron v. United States*¹⁷⁷, the officers had a warrant to search for liquor, but the warrant did not describe a certain ledger and invoices pertaining to the operation of the business. The latter were seized during the search of the place of business but were not returned on the search warrant, as they were not described therein. The offense of maintaining a nuisance under the National Prohibition Act was being committed in the room by the arrested bartender in the officers’ presence. The search warrant was held not to cover the articles seized, but the arrest for the offense being committed in the presence of the officers was held to authorize the search for and seizure of the ledger and invoices, this Court saying:

“The officers were authorized to arrest for crime being committed in their presence, and they lawfully arrested Birdsall. They had a right without a warrant contemporaneously to search the place in order to find and seize the things used to carry on the criminal enterprise. . . . The closet in which liquor and the ledger were found was used as a part of the saloon. And, if the ledger was not as essential to the maintenance of the establishment as were

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¹⁷⁶ Id.

¹⁷⁷ 275 U.S. 192 (1927).
bottles, liquors and glasses, it was nonetheless a part of the 
outfit or equipment actually used to commit the offense. 
And, while it was not on Birdsall’s person at the time of his 
arrest, it was in his immediate possession and control. The 
authority of officers to search and seize the things by which 
the nuisance was being maintained extended to all parts of 
the premises used for the unlawful purpose.”

The Rabinowitz Court then noted that, as long as the object of the search was rationally 
related to the offense of arrest, it was sufficiently distinguishable from an unreasonable 
general search:

[Prior] cases condemned general exploratory searches, which cannot be 
undertaken by officers with or without a warrant. In the instant case, the 
search was not general or exploratory for whatever might be turned up. 
Specificity was the mark of the search and seizure here. There was 
probable cause to believe that respondent was conducting his business 
illegally. The search was for stamps overprinted illegally, which were 
thought upon the most reliable information to be in the possession of and 
concealed by respondent in the very room where he was arrested, over 
which room he had immediate control, and in which he had been selling 
such stamps unlawfully.

In further support of its assessment of reasonable scope, the Court cited Harris v. United 
States, a case that involved a SITLA that extended throughout the arrestee's

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179 Id. at 62-63.

apartment and lasted for five hours.\textsuperscript{181} In concluding that the search was reasonable, the Court emphasized the relationship between the nature of the offense and the objects of the search:

Nor can support be found for the suggestion that the search could not validly extend beyond the room in which petitioner was arrested. Petitioner was in exclusive possession of a four-room apartment. His control extended quite as much to the bedroom in which the draft cards were found as to the living room in which he was arrested. The canceled checks and other instrumentalities of the crimes charged in the warrants could easily have been concealed in any of the four rooms of the apartment . . . the area which reasonably may be subjected to search is not to be determined by the fortuitous circumstance that the arrest took place in the living room, as contrasted to some other room of the apartment.\textsuperscript{182}

While even here the Court invoked the “immediate control” rationale of SITLA,\textsuperscript{183} it seems to reflect a fiction; few would consider the entire apartment of an arrestee to be within his “immediate control” after he is placed in custody. Nonetheless, by characterizing the location of the arrest as a “fortuitous” factor,\textsuperscript{184} the Court seemed more interested in authorizing the search for evidence related to the offense at the location of the arrest than any exigency related to the arrestee’s ability to access (and potentially destroy) such evidence, a theory obviously central to the \textit{Rabinowitz} holding.\textsuperscript{185}

\begin{flushright}
\textsuperscript{181} \textit{Id.} at 149.
\textsuperscript{182} \textit{Id.} at 152.
\textsuperscript{183} \textit{See Id.}
\textsuperscript{184} \textit{Id.}
\textsuperscript{185} \textit{See Id.} at 152-53 (“The same meticulous investigation which would be appropriate in a search for two small canceled checks could not be considered reasonable where agents are seeking a stolen automobile or an illegal still. We do not believe that the search in this case went beyond that which the situation reasonably demanded.”);
\end{flushright}
Justice Scalia’s ‘reasonable belief’ concept – a concept ultimately adopted by the *Gant* majority – can only be understood in light of this line of precedent. Unlike the earlier decisions he invoked, Justice Scalia confronted a barrier against merely including within the scope of a SITLA the entire area in which a suspect was arrested: *Chimel*. *Chimel* viewed the “area of immediate control” as more limited than the area considered within that scope in these earlier decisions. As noted above, by the time *Thornton* was decided (long after *Chimel*), immediate control had become synonymous with the lunging distance, or wingspan of the arrestee. Accordingly, Justice Scalia was apparently compelled to develop an alternate theory to resurrect the type of evidentiary search justified by the much broader scope of the SITLA applied in *Rabinowitz* and its progeny.

**Part V. The Gant Balance Sheet.**

There is no question that on the surface *Gant* appears to severely curtail the authority of police to conduct an automobile SITLA following arrest of a vehicle occupant or recent occupant. While *Gant* did not overrule *Belton*, a footnote in the majority opinion indicates that although still breathing, *Belton* is on life support:

Because officers have many means of ensuring the safe arrest of vehicle occupants, it will be the rare case in which an officer is unable to fully effectuate an arrest so that a real possibility of access to the arrestee’s vehicle remains. But in such a case a search incident to arrest is reasonable under the Fourth Amendment.

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*Rabinowitz*, 339 U.S. at 63 (“*Harris* . . . is ample authority for the more limited search here considered.”) (internal citation omitted)).


1 See e.g. Id. at 1719 (“. . . [T]he *Chimel* rationale authorizes police 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.”).

*Id.* at 1719 n.4.
The message seems clear: it will be rare case where the situation results in the type of
genuine access to the automobile necessary to justify application of Belton.

This, however, does not mean a search contemporaneous with the arrest of a
vehicle occupant or recent occupant will now almost invariably be considered
unreasonable. In fact, quite the opposite is true. First, the pre-existing search
justifications resulting from probable cause (for a full evidence search) or reasonable
suspicion the vehicle contains a weapon (for a cursory Terry interior sweep) are totally
unaffected by Gant. In fact, the opinion emphasizes the continuing validity of these
well-established theories of reasonableness. However, it is the inclusion of Justice
Scalia’s ‘reasonable belief’ concept that will significantly impact future automobile
searches.

Assuming the police arrest a suspect after approaching her in a vehicle or soon
after she exits the vehicle, Gant essentially presumes that the apprehension will result in
restraint sufficient to eliminate any SITLA justification. Unless someone else will be
permitted to return to the vehicle to drive it away from the scene (such as a passenger
who was not arrested), the police will have no basis to conduct an interior sweep for

189 See Id. at 1721.

190 Id.

191 Id. (“Other established exceptions to the warrant requirement authorize a vehicle search under additional
circumstances when safety or evidentiary concerns demand. For instance, Michigan v. Long, 463 U.S. 1032 (1983),
permits an officer to search a vehicle’s passenger compartment when he has reasonable suspicion that an individual,
whether or not the arrestee, is ‘dangerous’ and might access the vehicle to ‘gain immediate control of weapons.’ Id.
at 1049, (citing Terry v. Ohio, 392 U.S. 1(1968)). If there is probable cause to believe a vehicle contains evidence of
criminal activity, United States v. Ross, 456 U.S. 798, 820-821 (1982), authorizes a search of any area of the vehicle
in which the evidence might be found. . . . Finally, there may be still other circumstances in which safety or
to arrest, an officer may conduct a limited protective sweep of those areas of a house in which he reasonably
suspects a dangerous person may be hiding”).

192 Id. at 1723-24 (“Police may search a vehicle incident to a recent occupant’s arrest only if the arrestee is within
reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle
contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee’s vehicle will
be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies.”).
weapons pursuant to *Michigan v. Long.*\(^{193}\) If the police have probable cause that evidence is in the vehicle, then the *Belton/Gant* line of authority becomes essentially irrelevant because of the alternate authority to conduct a probable cause search of the vehicle without first obtaining a warrant.\(^{194}\) However, what happens if none of these authorities are triggered?

At this point, a “reasonable [belief] the vehicle contains evidence of the offense of arrest” becomes decisive.\(^ {195}\) That belief justifies a full search of the vehicle for that evidence.\(^ {196}\) Reasonable belief therefore cannot be analogous to probable cause (because the *Gant* Court recognized that probable cause provides an independent basis for the evidentiary search)\(^ {197}\), or reasonable suspicion (because reasonable suspicion has never justified a full evidentiary search).\(^ {198}\) Instead, reasonable belief is best understood as a tether – both historical and practical. Historically, it represents a tether back to the originally broad scope of SITLA central to *Harris* and *Rabinowitz*, but subsequently narrowed by *Chimel*. Practically, it is a tether that connects the probable cause for the arrest to the search for the evidence - a tether because it presupposes the absence of independent probable cause to conduct the search (which would obviate the need for the ‘reasonable belief’ justification).

Accordingly, ‘reasonable belief’ is best understood as a hybrid between a procedural and substantive justification for reasonable government action. The link it

\(^{193}\) 463 U.S. 1032 (1983) (extending the concept of a *Terry* frisk to the interior of a vehicle when the police have reasonable suspicion that someone can rapidly access a weapon inside the vehicle).


\(^{195}\) *Gant*, 129 S. Ct. at 1721.

\(^{196}\) See Id. at 1719.

\(^{197}\) See Id. at 1721 (“If there is probable cause to believe a vehicle contains evidence of criminal activity, *United States v. Ross*, 456 U.S. 798, 820-821 (1982), authorizes a search of any area of the vehicle in which the evidence might be found.”).

establishes between the justification for the arrest and the justification for the subsequent vehicle search reflects the procedural nature of the concept – in effect extending the justification for the arrest to the search for evidence of the arrest. However, the concept includes a modest yet important substantive aspect: the requirement that the linkage between the arrest and the evidence searched for be reasonable.

This substantive element does not, however, seem analogous to either reasonable suspicion or probable cause for one critical reason: there is no requirement that the belief be based on any articulable fact that evidence is in the automobile. Instead, the mere nature of the offense of arrest is what ostensibly renders the belief reasonable.\textsuperscript{199} That it is the nature of the arrested offense and not any individualized articulable fact that establishes reasonable belief seems almost indisputable after considering the genesis of the concept. By reaching back to \textit{Harris} and \textit{Rabinowitz}, Justice Scalia almost unquestionably resurrected the aspect of those decisions later overruled by \textit{Chimel};\textsuperscript{200} that the mere nature of the offense, and not the risk of evidence destruction, danger to the police, or articulable facts establishing probable cause is what justifies the broader scope of the search associated with the arrest.\textsuperscript{201}

\textit{Gant}’s limitation of the search authority it triggers to automobiles also demonstrates the minimal nature of the substantive aspect of reasonable belief. In its endorsement of Justice Scalia’s \textit{Thornton} concept, the Court emphasized that

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\item \textsuperscript{199} \textit{See Gant}, 129 S. Ct. at 1719 (“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. But in others, including \textit{Belton} and \textit{Thornton}, the offense of arrest will supply a basis for searching the passenger compartment of an arrestee’s vehicle and any containers therein.”) (internal citations omitted).
\item \textsuperscript{200} \textit{See} Jack Blum, \textit{Arizona v. Gant}: Missing an Opportunity to Banish Bright Lines From the Courts Vehicular Search Incident to Arrest Jurisprudence, 70 Md. L. Rev. 826 (claiming the Gant Court should have restored an exigency based standard similar to that in \textit{Chimel} when they deviated from the previous bright-line standard set forth in \textit{Belton} and their failure to do so created an unacceptably vague precedent).
\item \textsuperscript{201} \textit{See Thornton}, 541 U.S. at 629 (Scalia, J., concurring). I use “associated” because \textit{Chimel} precludes characterizing this expanded scope as an aspect of a SITLA.
\end{itemize}
It is a well-established aspect of Fourth Amendment jurisprudence that automobiles are afforded a reduced expectation of privacy. This reduced expectation lies at the core of the automobile exception to the warrant requirement, as well as the extension of that exception to containers contained within an automobile. Accordingly, it seems significant that the Court limited the scope of a ‘reasonable belief’ search to the automobile, and did not extend it to any area within the arrestee’s possession (which would have been more consistent with Justice Scalia’s Thornton reliance on Harris and Rabinowitz). While the Court is obviously willing to tolerate an expanded search authority in relation to a recent arrestee’s automobile, the opinion does not (at least explicitly) indicate an analogous tolerance for other areas within an arrestee’s possession, such as her home.

Ultimately, revealing the full extent of Gant’s ‘reasonable belief’ search authority will depend on further jurisprudence. Is a reasonable belief established solely by the nature of the crime of arrest, or is some additional quantum of proof required? If based solely on the offense, what offenses create such reasonable belief? What is the scope of

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202 See Gant, 129 S. Ct. at 1719 (Although 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 evidence relevant to the crime of arrest might be found in the vehicle.’” (citing Thornton, 541 U.S., at 632, (Scalia, J., concurring) (emphasis added))).

203 See California v. Carney, 471 U.S. 386, 392-393 (1985) (“When a vehicle is being used on the highways, or if it is readily capable of such use and is found stationary in a place not regularly used for residential purposes -- temporary or otherwise -- the two justifications for the vehicle exception come into play. First, the vehicle is obviously readily mobile by the turn of an ignition key, if not actually moving. Second, there is a reduced expectation of privacy stemming from its use as a licensed motor vehicle subject to a range of police regulation inapplicable to a fixed dwelling.”).


205 See generally Thornton, 541 U.S. at 629 (Scalia, J., concurring). Neither Rabinowitz nor Harris involved a search of a suspect’s vehicle. Rabinowitz involved the search of a one-room office for counterfeit stamps, while Harris involved the search of an apartment and its contents for stolen checks.

206 See George M. Dery III, A Case of Doubtful Certainty: The Court Relapses into Search Incident to Arrest Confusion in Arizona v. Gant, 44 Ind. L. Rev. 395 (discussing how the Court’s decision in Gant offered very little guidance in terms of proximity, limits, and applicability and leave the many unclear aspects of the Gant decision for future courts to interpret, which undermines the rationales and confidence of law enforcement activities).
the automobile search authority triggered by reasonable belief? Is it, like the Belton SITLA, restricted to the interior compartment of the automobile? Or does it extend to any part of the automobile where evidence may be found (like the trunk)? Will a reasonable belief justify a post-arrest search of other areas within an arrestee’s possession, such as a home or office? Does the authority extend to all containers in the automobile?

If, as proposed herein, reasonable belief is indeed a new search justification, these questions of scope and substance become unavoidable. At this point, one thing seems clear: Gant is a genuine double-edged sword in the realm of search justification.

A. The Good (for Police)

By qualifying the constriction of Belton’s SITLA authority with the concept of reasonable belief, the Supreme Court did not, as many assumed, inflict a mortal blow to post-arrest vehicle searches; Gant’s impact was far from it. First, as noted by the Court, existing exceptions to the warrant and/or probable cause requirements continue to provide police with substantial vehicle search authority. However, police now also have search authority derived from the nature of the offense for which the suspect is arrested. Looking to the pre-Chimel jurisprudence Justice Scalia relies on as the foundation for his ‘reasonable belief’ concept, the range of offenses that will trigger this search authority appears to be quite broad.

A vehicle search based on ‘reasonable belief’ that evidence is located in the vehicle will obviously provide police lawful access to the vehicle’s interior. As a result,

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207 Considering that both the Belton SITLA and the automobile exception to the warrant requirement permit the search of containers in the vehicle, it is almost inconceivable that this question will be answered in the negative.

208 See Gant, 129 S. Ct. at 1719.

209 Id. at 1721.

210 See Thornton, 541 U.S. at 631-32 (Scalia, J., concurring).
when linked to the plain view doctrine\textsuperscript{211}, this aspect of \textit{Gant}’s vehicle search authority provides an additional benefit for police. So long as the extent of the vehicle search is proper in its scope, any contraband discovered may be seized, irrespective of whether it is evidence of the crime of arrest. Nor is there any reason to assume that ‘reasonable belief’ search authority does not extend to the trunk of the automobile. Because the foundation of this search authority differs from the protective search foundation of SITLA, restricting the scope to the interior compartment (like SITLA) would be illogical. So long as evidence related to the crime of arrest might be in the trunk, the trunk would be within proper scope. The same logic would apply to containers inside the automobile, so long as evidence of the crime of arrest might be found in those containers.

The net result of all of these considerations is that contrary to the restrictive tone of \textit{Gant}, the ‘reasonable belief’ prong of the decision will in fact often expand police search authority. Furthermore, because lawful vantage point and access to seize contraband then triggers the plain view doctrine\textsuperscript{212}, associated seizure authority will not be limited to evidence of the crime of arrest, but will extend to any evidence discovered in plain view while search for evidence of the crime of arrest. However, there is one context where \textit{Gant} will modify police authority to conduct post-arrest vehicle searches. Ironically, this modification will effectively nullify an authority not even addressed in the \textit{Gant} opinion.

\textbf{B. The Good (for the Public)}

If the range of offenses triggering a ‘reasonable belief’ that evidence related to the offense will be in the automobile is quite broad, the value of restricting the \textit{Belton} SITLA

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\textsuperscript{212} \textit{See Horton v. California}, 496 U.S. 128 (1990) (requiring a police officer seizing evidence in plain view (i) to be lawfully present at the place where the evidence can be plainly viewed; (ii) to have a lawful right of access to the object, and (iii) that the incriminating character of the object is immediately apparent).
\end{footnotesize}
might appear questionable. However, there is one type of situation where *Gant* will significantly curtail police search authority: what the Court previously characterized as a pretextual arrest. In *United States v. Robinson*, the Supreme Court held that any lawful arrest triggers the authority to conduct a SITLA, irrespective of the subjective motive of the arresting officer. In that case, the defendant argued that his arrest for a minor traffic infraction was in fact motivated by the arresting officer’s desire to conduct a SITLA, and therefore was pretextual. Because a reasonable officer would rarely arrest an individual for such a minor offense, the defendant argued the subsequent SITLA was unreasonable.

Rejecting this argument, the Court established a bright line trigger for the SITLA: lawful arrest. Motive for arrest is simply irrelevant, as long as the arrest was authorized by law and was conducted pursuant to valid probable cause. The defendant argued that this ruling would effectively provide police with a blank check for searching vehicles because existing statutes allow for arrest for such a wide variety of traffic violations. The Court, however, was un-persuaded that this reality justified a case-by-case assessment of the propriety of the arrest or the necessity for the SITLA. The Court prohibited lower courts from probing any possible pretext for the arrest. Reasoning that the police would be concerned that their justification for the arrest would be subjected to subsequent judicial scrutiny, the Court rejected a rule that would

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214 Id. at 235 (“It is the fact of the lawful arrest, which establishes the authority to search . . .”).
215 See Id. at 221 n.1.
216 See Id.
217 See Id. at 235.
218 Id.
219 Id.
220 Id.
place police at risk by causing them to hesitate in conducting SITLAs.\textsuperscript{221} The term ‘pretextual arrest’, therefore, while a factual reality in the view of many, is a legal oxymoron.

\textit{Gant}, however, has substantially altered this conclusion. It is clear that the decision in no way modified \textit{Robinson}'s holding that the subjective motive of an arresting officer is irrelevant to assessing the propriety of a SITLA. However, \textit{Gant}'s impact on the ability to use a traffic infraction as the trigger for a SITLA is profound. Because evidence related to a traffic offense will rarely be in the vehicle itself, SITLA authority will terminate once the arrested driver or passenger is under effective police control. This control will eliminate any legitimate need to search the vehicle in order to secure any weapons within the arrestee's lunging distance. The only other justification for a vehicle search following \textit{Gant} would be reasonable belief evidence related to the offense will be in the vehicle, which will rarely be the case in relation to traffic offenses. Indeed, \textit{Gant} is an example of how traffic related offenses do not trigger such reasonable belief. Accordingly, whether as a pretext to gain the opportunity to search a suspect's vehicle, or as a legitimate exercise of police authority, traffic related arrests will rarely justify a search of the arrestee's vehicle absent some alternate exception to the warrant and/or probable cause requirement.

Traffic offense arrests are precisely the type of offenses previously offering police a pretext to conduct an exploratory search of an automobile without probable cause. Limiting post-arrest search authority in relation to such offenses is, as the Court emphasized in \textit{Gant}, an important step forward in reconnecting the automobile SITLA with the reasonableness touchstone of the Fourth Amendment.\textsuperscript{222} Thus, although the Court in no way addressed the continued validity of \textit{Robinson}, the effect of its decision will in large measure achieve the relief \textit{Robinson} requested but was denied. Like \textit{Gant}

\textsuperscript{221} Id.

\textsuperscript{222} See \textit{Arizona v. Gant}, 129 S. Ct. 1710, 1719 (2009).
himself, future suspects arrested for traffic infractions will be protected from reliance on those offenses as a justification for a general search of their automobiles.

Part VI. Conclusion

Reconnecting the automobile SITLA with the underpinnings of the original SITLA exception, denying a recently arrested suspect access to evidence and/or weapons, was the primary focus of the Gant opinion. This aspect of the decision nullified a troubling legal fiction that enabled police to transform any arrest of a vehicle occupant or recent occupant to a general search of the vehicle unsupported by any individualized suspicion. While Belton’s automobile SITLA authority was not eliminated, as the Court noted, the likelihood that most arrested vehicle occupants would rarely retain the type of genuine access to the automobile to trigger Belton indicates that the true automobile SITLA will now be a rare occurrence.223

Had the Gant majority limited the decision to this constriction of the Belton automobile SITLA, a clear range of automobile search options would have emerged, all of which based on well-established Fourth Amendment jurisprudence. In the rare situations where an arrested vehicle occupant retained genuine access to the vehicle interior, police would be authorized to search the vehicle interior pursuant to Belton. In most situations, where the control over the arrestee deprives him of such access, probable cause that evidence is in the vehicle would trigger the automobile exception to the warrant requirement, allowing police to search the vehicle for such evidence (with the obvious scope limitation based on the nature of the evidence). Even without probable cause to search for evidence or genuine concern that the arrestee will gain access to the vehicle interior, reasonable suspicion that another individual will gain ready access to a weapon once the vehicle is released will allow police to conduct a cursory ‘sweep’ of the vehicle interior to ensure their safety. Finally, if the vehicle is

223 See Id. at n.4. (“Because officers have many means of ensuring the safe arrest of vehicle occupants, it will be the rare case in which an officer is unable to fully effectuate an arrest so that a real possibility of access to the arrestee’s vehicle remains.”).
impounded as an incident to the arrest, it will almost always result in an inventory search. Any evidence discovered during any of these searches may be seized pursuant to the plain view doctrine.

This range of search options would have provided police with a powerful investigatory arsenal. However, the majority added a new weapon to that arsenal: the authority to search the vehicle for evidence related to the crime of arrest whenever police have “reason[] to believe” that such evidence may be in the vehicle.224 While the Court emphasized that traffic violations like the one leading to Gant’s arrest would rarely produce such reasonable belief,225 it unfortunately did not define what that term required. As noted in this article, it may be tempting to equate reasonable belief with reasonable suspicion. However, doing so is inconsistent with the fundamental limitations on the authority derived from reasonable suspicion: that it has never been a causal justification for an evidentiary search.226 Because, according to Gant, a reasonable belief creates just such a justification, it is illogical to conclude that the Court intended the term to be a synonym for reasonable suspicion. It is even more illogical to conclude reasonable belief was intended to be a synonym for probable cause. First, the terminology is markedly different from probable cause. More importantly, treating reasonable belief as such a synonym would be superfluous, for the existence of probable cause provides an independent and well-established justification to search for evidence in the automobile at the scene of arrest without a warrant.227

224 Id. at 1723.
225 Id. at 1719.
226 See Terry v. Ohio, 392 U.S. 1, 25-26 (1968) (“A search for weapons in the absence of probable cause to arrest, however, must, like any other search, be strictly circumscribed by the exigencies which justify its initiation. Thus it must be limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby, and may realistically be characterized as something less than a ‘full’ search, even though it remains a serious intrusion.” (citing Warden v. Hayden, 387 U.S. 294, 310 (1967) (Fortas, J. concurring))).
Tracing the roots of Gant’s reasonable belief concept back to its origins reveals the most logical meaning of the term: a procedural tether between the probable cause for the arrest and the search for evidence in the automobile. A review of Justice Scalia’s concurring opinion in *Thornton v. United States*, the opinion on which the Gant majority relies for the reasonable belief concept, indicates that it was never conceived as a substantive causal justification. Instead, it was intended to be a modern day variant of the ‘area within the arrestee’s possession’ concept that defined the legitimate scope of a SITLA prior to *Chimel*’s narrowing of that scope to the arrestee’s ‘lunging distance.’ However, *Chimel* did in fact narrow the scope of the SITLA from the *Harris/Rabinowitz* ‘area in possession’ to the arrestee’s ‘lunging distance.’ As a result, it was impossible to assert that a search of the automobile of a recent arrestee for evidence related to the offense is justified because the automobile was in his ‘possession’ at the time of the arrest. Nonetheless, the logic of that aspect of *Harris* and *Rabinowitz* could be resurrected on one condition: the nature of the offense of arrest leads to a reasonable belief that evidence associated with such offenses is normally found in the area within the arrestee’s possession.

Ultimately, this logic led the Gant majority to allow for the search for such evidence in an automobile based solely on the nature of the offense, with no other articulable basis to justify the search. This indicates two unavoidable conclusions. First, the ‘reasonable belief’ search authority of Gant is entirely distinct from SITLA authority, indicating that the scope limitations of the automobile SITLA are inapplicable. Second, reasonable belief is not synonymous with reasonable suspicion because of the lack of an individualized articulable fact requirement to establish the belief. It is the nature of the offense of arrest alone, and no specific indicator of the presence of evidence in the automobile, that renders the belief reasonable.

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228 541 U.S. 615 (2004).
The net result of *Gant*, therefore, is not as debilitating to police as it may appear at first glance. Police only retain all the pre-existing vehicle search justifications (a point emphasized by the *Gant* majority). While SITLA authority will normally be terminated once the arrestee is restrained, this will not always prohibit a suspicion-less search of the automobile. If the offense of arrest is one that normally involves the possession of associated evidence, police will be authorized to search the vehicle. Furthermore, unlike the SITLA search, these ‘reasonable belief’ searches will not be confined to the interior compartment of the automobile. As long as it is the type of evidence that may be concealed on other parts of the vehicle, those parts (most importantly the trunk) should fall within the scope of the justification.

*Gant* does, however, substantially alter one particularly troubling type of post-arrest vehicle search: those based on arrest for a traffic infraction. These SITLA’s have always seemed troubling because of the perception that police use the arrest as a pretext in order to trigger SITLA authority. It is clear that the Court has foreclosed the ability to challenge the subjective motivation for an arrest, and that nothing in *Gant* altered that aspect of SITLA. However, because the arrestee will rarely (if ever) have evidence related to a traffic arrest in the automobile, *Gant* effectively nullifies the efficacy of the traffic arrest-triggered SITLA. The arrest will presumptively result in restraint of the arrestee, terminating the SITLA authority. This fact, when coupled with the inability to assert a reasonable belief that evidence related to the offense will be found in the vehicle, will place any vehicle search based on the arrest outside the bounds of reasonableness defined by *Gant*. 