El Segundo Police Department
Training Section
348 Main Street, El Segundo, CA 90245
Phone (310) 524-2253

TRAINING BULLETIN

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Courtesy of James R. Touchstone, Esq.

THE FOURTH AMENDMENT DOES NOT PERMIT SEARCHING A VEHICLE TO LOCATE A DRIVER'S IDENTIFICATION FOLLOWING A TRAFFIC STOP ABSENT WARRANT OR OTHER EXCEPTION TO WARRANT REQUIREMENT

On November 25, 2019 in the case of *United States v. People v. Lopez(1),* the California Supreme Court concluded that the desire to obtain a driver's identification following a traffic stop does not constitute an independent, categorical exception to the Fourth Amendment's warrant requirement permitting a search of a vehicle. In reaching its conclusion, the Court overruled its previous case to the extent it ruled otherwise.

Background

On the morning of July 4, 2014, City of Woodland Police Officer Jeff Moe responded to an anonymous tip concerning erratic driving. The tip described the car, a dark-colored Toyota, and the area in which it was driving. Officer Moe was not able to locate the vehicle. He asked dispatch to run a computer search of the license plate, and then drove by the address where the car was registered. He still did not see the vehicle, and resumed his duties.

Around 1:30 p.m., Officer Moe received a second anonymous report regarding the same car. The tipster identified the car's location and asserted the driver, whom the tipster identified as "Marlena," "had been drinking all day." However, Officer Moe again did not locate the car. He went back to the registered address, parked, and waited. After a few minutes, defendant Maria Elena Lopez

drove up and parked in front of the house.

Moe did not observe any traffic violations or erratic driving. But believing the driver to be “Marlena,” Officer Moe approached the car. Moe testified at the suppression hearing that Lopez saw him, looked nervous, exited the car, and started to walk away from him. Moe did not smell alcohol or note any other signs of intoxication, but “wanted to know what her driving status was based on the allegations earlier, plus [he] wanted to identify who she was.” Moe asked Lopez if she had a driver’s license. Lopez said that she did not. Without asking Lopez for her name or other identifying information, Moe detained her for unlicensed driving by placing her in a control hold. When Lopez tried to pull away, Moe handcuffed her.

Officer Moe then asked Lopez “if she had . . . any identification possibly within the vehicle.” When Lopez responded “there might be,” a second officer on the scene opened the passenger door, retrieved a small purse from the passenger seat, and handed it to Moe. Moe then searched the purse and found a baggie containing methamphetamine in a side pocket.

Lopez was charged with misdemeanor violations of possessing methamphetamine (Health & Safety code section 11377(a)) and driving when her license to drive had been suspended or revoked (Vehicle Code section 14601.2(a)). She filed a motion to suppress evidence (Penal Code section 1538.5(a)(1)), arguing she had been unlawfully detained and her purse unlawfully searched.

The trial court granted the suppression motion. The court concluded that once Lopez told Officer Moe she did not have a license, the officer had probable cause to detain and arrest her for driving without a valid license(2). However, the trial court further concluded that the subsequent search of Lopez’s vehicle was invalid because neither of the justifications for conducting a vehicle search incident to arrest under the United States Supreme Court’s decision in *Arizona v. Gant* (2009) 556 U.S. 332 was present. *Gant* held that a vehicle search incident to arrest is justified only if it is reasonable to believe the suspect can gain access to weapons inside the vehicle or that evidence of the offense of arrest might be found inside the vehicle. (Id. at p. 335.) Here, Lopez was handcuffed at the rear of her car when the search took place and could not reach any weapons inside the car. Nor was there any likelihood a search of the car would produce evidence of Lopez’s driving without a license in her possession.(3) With the evidence suppressed, the trial court dismissed the case.

The California Third District Court of Appeal reversed the suppression ruling. The Court of Appeal explained that *Gant* was not applicable because Lopez had not been formally arrested, only detained, at the time of the search. The authority for the search was thus not the search incident to arrest exception at issue in *Gant*, but the traffic-stop identification-search exception recognized in *In re Arturo D.* (2002) 27 Cal.4th 60, which allowed police to conduct warrantless vehicle searches for personal identification documents at traffic

stops when the driver failed to provide a license or other personal identification upon request. The Court of Appeal found that once Lopez told Officer Moe that she did not have a driver's license, Officer Moe had cause to believe Lopez had driven without a license in violation of the Vehicle Code. Under *Arturo D*., the police were then permitted to search Lopez's vehicle for other forms of identification in order to ensure that any citation and notice to appear for the Vehicle Code violation reflected Lopez's true identity. If *Arturo D.* "is still good law," the Court of Appeal concluded, "the search in this case was reasonable under the Fourth Amendment."

Discussion

The Supreme Court of California granted review "to consider the application and continuing validity of the *Arturo D.* rule in light of subsequent legal developments." The Court explained that "warrantless searches 'are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.' (*Katz v. United States* (1967) 389 U.S. 347, 357, fns. omitted; accord, People v. Redd (2010) 48 Cal.4th 691, 719 ["A warrantless search is presumed to be unreasonable"].)" Whether a particular kind of search is exempt from the warrant requirement ordinarily depends on whether, under the relevant circumstances, law enforcement's need to search outweighs the invasion of individual privacy. (*Riley v. California* (2014) 573 U.S. 373, 385; *Delaware v. Prouse* (1979) 440 U.S. 648, 654; *Camara v. Municipal Court* (1967) 387 U.S. 523, 536-537.)

The Court explained that *Arturo D.* involved two consolidated cases in which law enforcement officers had detained drivers for traffic infractions and the drivers could produce neither a driver's license nor the vehicle's registration in response to the officers' requests. In one case, the officer entered the defendant's truck and reached under the driver's seat. The officer did not find any relevant documents but did find a box that later was found to contain methamphetamine. In the other case, the officer entered the defendant's car and looked first in the glove compartment and then under the front passenger seat, finding a wallet that contained a baggie of methamphetamine. *Arturo D.* upheld both searches, holding that when a driver has been detained for a traffic infraction and fails to produce vehicle registration or personal identification documentation upon request, the Fourth Amendment "permits limited warrantless searches of areas within a vehicle where such documentation reasonably may be expected to be found." (*Arturo D*., supra, 27 Cal.4th at p. 65.)

In reaching its conclusion, *Arturo D.* upheld warrantless searches for both vehicle registration and personal identification. However, the explanation for establishing this exception to the warrant requirement focused primarily on vehicle registration rather than personal identification, relying on various California and out-of-state cases upholding warrantless searches of vehicles for the purpose of locating the vehicle registration.(4) However, *Arturo D.* did not identify any prior cases, either from California or elsewhere, that held that the need to locate a driver's license or other form of personal identification could alone justify a warrantless search.

The Court further noted that, in *Knowles v. Iowa* (1998) 525 U.S. 113, the United States Supreme Court held that the Fourth Amendment does not permit law enforcement to search the vehicle of a person who has been cited, but not arrested, for a traffic violation – thereby rejecting application of what was called a "search incident to citation" exception to the Fourth Amendment's warrant requirement. *Arturo D.* distinguished *Knowles* on the ground that *Knowles* concerned a full search of the entire vehicle after the issuance of a traffic citation, not a search for documentation before issuing a traffic citation, limited to the areas in which such documentation might reasonably be found. *Arturo D.* said that because the high court had never considered whether the Fourth Amendment permits warrantless traffic-stop searches specifically for documentation, as opposed to contraband, *Knowles* did not foreclose the recognition of such an exception to the warrant requirement.

Here, the California Supreme Court stated that although Officer Moe's search of Lopez's purse after detaining her for a traffic violation was not a scenario squarely addressed in *Arturo D.*, there was "no real question that the search in this case was conducted in accordance with *Arturo D.*'s general guidance." The Court explained that Lopez conceded that by telling Officer Moe that she did not have a driver's license in her possession, she had committed a traffic infraction for driving without physical possession of a license. This gave Officer Moe the authority to detain her for a reasonable time to decide whether to cite Lopez and to verify her identity. Under *Arturo D.* specifically, Lopez's failure to produce a driver's license also gave Officer Moe the authority to search her vehicle for the license or other forms of personal identification. And Lopez's purse was within the scope of the officer's search authority under *Arturo D.* because a purse is "[t]he most 'traditional repository' of a driver's license" for a certain class of drivers. (*Arturo D., supra*, 27 Cal.4th at p.90 (conc. & dis. opn. of Werdegar, J.).) Moreover, *Arturo D.* held it was not unreasonable for law enforcement to search the vehicle for personal identification instead of either asking for the driver's consent to search or arresting the driver if unsatisfied with the driver's identification, as the high court had suggested in *Knowles.* (*Arturo D.*, at pp. 76-77, fn. 17; see *Knowles, supra,* 525 U.S. at p. 118.).

Having settled that the search of Lopez's car was consistent with the guidance given in *Arturo D.*, the Supreme Court declared the central issue was whether to continue to abide by its holding of *Arturo D.*, "notwithstanding subsequent legal developments casting doubt on the validity of a categorical rule authorizing warrantless vehicle searches whenever a driver stopped for a traffic infraction fails to produce a license or other satisfactory identification documents upon request."

The California Supreme Court next turned to the high court's decision in *Gant*. The Court explained that although *Gant* was not directly applicable here because it concerned a different exception to the Fourth Amendment's warrant requirement, Lopez contended that the reasoning of *Gant* undermined the validity of the *Arturo D.* identification-search exception. The Court proceeded to consider the Supreme Court precedent leading to *Gant*, including the *Chimel(5)*,

Belton(6) and *Thornton(7)* decisions.

In 2009, the high court considered the issue again in *Gant.* The defendant in *Gant* had been arrested for driving with a suspended license. While he was handcuffed in the back of a locked patrol car, police officers searched his vehicle and found drugs. The United States Supreme Court invalidated the search. *Gant* held that a *Belton* search for weapons or destructible evidence is permitted only when an arrestee is actually capable of reaching the area to be searched. (*Gant, supra,* 556 U.S. at p. 343 & fn. 4.) *Gant* also allowed searches for evidence relevant to the crime of arrest (*Id.*), although the Court observed that, as in most cases involving arrests for traffic violations, there was no chance of finding relevant evidence inside the car.

Gant rejected the state's argument that a broader, more categorical rule authorizing vehicle searches incident to arrest "correctly balances law enforcement interests, including the interest in a bright-line rule, with an arrestee's limited privacy interest in his vehicle." (*Gant, supra,* 556 U.S. at p.344.) The California Supreme Court here next considered *Arturo D.* in light of the *Gant* decision, which came more than six years later, and other subsequent legal developments.

The Court here explained that "[w]hen emergent [United States] Supreme Court case law calls into question a prior opinion of another court, that court should pause to consider its likely significance before giving effect to an earlier decision."(8) The California Supreme Court elaborated: "[E]ven when the high court's decision did not directly address the continuing validity of the rule in question. The high court's guidance may nonetheless erode the analytical foundations of the old rule or make clear that the rule is substantially out of step with the broader body of relevant federal law."(9) The Court determined that the reasoning of *Gant* presented "additional, highly relevant guidance not available at the time of *Arturo D. Gant* speaks clearly to the stakes on each side, and its reasoning calls for a reappraisal of the proper balance of interests to ensure consistency with the larger body of Fourth Amendment law."

Gant had warned against "undervalu[ing] the privacy interests at stake" in the context of vehicle searches. (*Gant, supra,* 556 U.S. at pp. 344-345.) The Court here found that *Arturo D.* contained no discussion of the magnitude of the intrusion associated with a search for a driver's license or other proof of identity, and merely cited high court authority for the proposition that drivers "have a reduced expectation of privacy while driving a vehicle on public thoroughfares." *Gant* had clarified that because a motorist's privacy interest in his vehicle was important and deserving of constitutional protection, a rule that allowed police officers to search vehicles (and the purses and other containers therein) "whenever an individual [wa]s caught committing a traffic offense" was not only a "serious and recurring threat to . . . privacy," but a threat that "implicate[d] the central concern underlying the Fourth Amendment—the concern about giving police officers unbridled discretion to rummage at will among a person's private effects." The Court explained that although *Gant* addressed a different exception to the warrant requirement, the decision was quite relevant because

the identification-search exception was also a rule that permitted officers to search vehicles, including—*especially including*—purses, briefcases, and other personal effects contained therein. The California Supreme Court maintained that the intrusion on privacy in the *Arturo D.* setting was possibly even greater than the intrusion in *Gant*, explaining: "While the privacy interests of an arrestee are necessarily diminished to some extent by the very fact of having been arrested [] *Arturo D.* applies to individuals who are merely *detained* for having committed a traffic violation."

Arturo D. outlined a series of limits to the identification-search power, and cautioned that the power was not to be used as a pretext to search for contraband and that the searches must be targeted to focus on the areas in which identification is likely to be found. However, the Court here observed that *Arturo D.* had been used as authority to uphold searches into purses, bags, center consoles, and glove compartments, under both driver and passenger seats, into backpacks in the bed of a truck, and up the sleeves of a jacket lying in the well behind the front seats of an SUV. The Court explained that as much as *Arturo D.* attempted to limit the authority it granted from the full-scale vehicle searches disapproved in *Knowles*, the inevitable consequence of a categorical rule authorizing officers to look for identification in places where they might reasonably believe the identification is located, or where it might have been hidden, was that officers would look throughout the area into which the driver might reach, much as they would if they were conducting a vehicle search incident to arrest. The Court found that *Arturo D.* had seriously undervalued substantial privacy interests at stake.

Turning to the law enforcement interests part in weighing the balance of interests, the Court explained that *Gant* guided that courts must pay close attention to the presence or absence of the circumstances that justify breaching a person's privacy by searching a vehicle and the personal effects contained therein. *Arturo D.*'s justification for its identification-search exception was the need to ensure that a law enforcement officer has the information necessary to issue a citation and notice to appear for a traffic infraction. *Arturo D.* considered a limited warrantless search to be more reasonable than the alternative of subjecting the driver to full custodial arrest, which would impose substantially greater burdens on drivers and law enforcement alike. *Arturo D.* considered no additional choices however.

Here, the Court explained that "experience and common sense suggest a range of options that are both less intrusive than a warrantless search and less burdensome than a full custodial arrest…To the extent there are adequate alternative avenues for obtaining the information needed by law enforcement, the interest in searching a vehicle without a warrant necessarily carries less weight." The officer can ask questions of the driver beyond querying whether the driver has personal identification, such as the driver's full name, address and date of birth. This information can be checked against Department of Motor Vehicles records. The detainee's physical characteristics also can be checked against such records. An officer can seek the driver's consent to search the vehicle for identification, since consent to a search is a well-established

exception to the warrant requirement for a search. Other exceptions also exist, for example if exigent circumstances are involved or the automobile exception if an officer has probable cause to believe that evidence of a crime will be found inside. An officer could also cite and release the detainee, or release the suspect with a warning against committing future violations. Finally, the officer could arrest the detainee and book the detainee into jail for the traffic violation. Thus, there are several alternatives to a warrantless search of the detainee's vehicle.

The Court acknowledged that the Fourth Amendment does not require law enforcement to use the least intrusive means of achieving its purposes. However, the Fourth Amendment does demand that law enforcement act reasonably. The availability of so many alternative means for achieving law enforcement goals tended to undermine the notion that the search intrusion was reasonable.

The Court observed that Moe could have employed any one of the several approaches discussed above to ascertain Lopez's identity once she exited the car. However, Officer Moe never even ask Lopez her name. Instead, after detaining Lopez for a suspected traffic infraction, the officer proceeded directly to searching the purse on the passenger's seat. Under *Gant*, Officer Moe could not have searched Lopez's vehicle if he had arrested her for unlicensed driving instead of simply detaining her. The Court concluded that searching Lopez's vehicle for her personal identification before she was arrested was no less unreasonable.

The Court also conducted a "[c]areful examination of the practices in other jurisdictions [which] reinforces our conclusion that the search at issue here was not reasonable under the circumstances." The California Supreme Court explained that neither the United States Supreme Court nor any other state has ever embraced a similar exception for traffic-stop identification searches as did *Arturo D*: "California still stands alone in authorizing warrantless vehicle searches for identification. No federal or state court has seen fit to adopt the rule; some have expressly rejected it." California remains a "minority of one" when it comes to approving a warrantless vehicle search solely for personal identification. To reaffirm the exception now, the California Supreme Court explained, would leave California out of step not only with United States Supreme Court precedent, but also with every other jurisdiction in the nation.

The Court held that the Fourth Amendment does not contain an exception to the warrant requirement for searches to locate a driver's identification following a traffic stop. To the extent it created such an exception, the California Supreme Court here overruled *In re Arturo D.* and concluded that it should no longer be followed. Accordingly, the Court reversed the judgment of the Court of Appeal and remanded for further proceedings.

Dissent

Three justices dissented, arguing that not only the principle of adherence to precedent supported its view but that *Gant* was "simply not on point" such that it

required reconsideration of *Arturo D.*'s "narrow exception." The dissent viewed the *Arturo D*. exception as "reasonable in light of the frequency with which drivers hide identification documents, the strong need to enforce traffic laws and thus maintain road safety, and the narrowly circumscribed nature of the search that we approved, which avoided the necessity of arresting the driver and conducting a more intrusive search." Such a "very limited search" did not "giv[e] police officers unbridled discretion to rummage at will among a person's private effects." (*Gant,* supra, 556 U.S. at p. 345.), and thus, did not match the comprehensive vehicle search disapproved in *Gant*. The dissent also maintained that *Gant* did not affect applicable Fourth Amendment standards in any way that necessitated a repudiation of *Arturo D.*

HOW THIS AFFECTS YOUR AGENCY

The California Supreme Court here recognized that law enforcement agencies have crafted policies in reliance on *Arturo D.*, and that "our decision today will require them to adopt a different approach in scenarios like the one presented here." However, the Court explained that subsequent legal developments regarding the validity of the traffic-stop identification-search exception warranted the changes in approach. The Court stated that the reliance interests at stake cannot justify continuation of a practice that results in recurring and unwarranted invasions of individual privacy. Agencies should examine potential revisions to policies and training in light of this decision to limit constitutional violations that might ensue should those policies continue to rely upon the *Arturo D.* decision, which has now been expressly overruled by the California Supreme Court.

As always, if you wish to discuss this matter in greater detail, please feel free to contact James R. Touchstone at (714) 446–1400 or via email at jrt@jones-mayer.com.

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Citations:

1. People v. Lopez, 2019 Cal. LEXIS 8892 (Nov. 25, 2019).
2. See Vehicle Code section 12500(a): "A person may not drive a motor vehicle upon a highway, unless the person then holds a valid driver's license issued under this code."
3. The trial court also concluded the People had not supplied support for a search for evidence of driving under the influence. Officer Moe observed nothing to suggest Lopez was under the influence, and the hearing testimony made clear the search was directed at finding identification.
4. Arturo D., supra, 27 Cal.4th at p. 71 & fn. 7 [citing People v. Webster (1991) 54 Cal.3d 411 and various Court of Appeal cases]; see also Arturo D., at p. 76, fn. 16 [citing additional out-of-state cases concerning searches for vehicle registration].
5. (1969) 395 U.S. 752.

6. (1981) 453 U.S. 454.
7. (2004) 541 U.S. 615.
8. Carpenters Local Union No. 26 v. U.S. Fidelity & Guar. Co. (1st Cir. 2000) 215 F.3d 136, 141.
9. See, e.g., People v. Anderson (1987) 43 Cal.3d 1104, 1138-1141; id. at p. 1141 ["it is our duty to reconsider" precedent when subsequent United States Supreme Court decisions cast doubt on our reading of that court's earlier decisions]; see also, e.g., People v. Gallardo (2017) 4 Cal.5th 120, 134-135 [reconsidering precedent in light of reasoning of subsequent high court decisions].