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Memorandum

TO: STATE'S ATTORNEYS & SUPERVISORY ASSISTANT STATE'S ATTORNEYS

FROM: T. Sugrue

DATE: April 21, 2009

SUBJECT: Appellate Update: **Vehicle Search Incident To Arrest *URGENT NOTICE***

In Arizona v. Gant, 556 U.S. ___ (No. 07-542) (2009), the United States Supreme Court has revisited and effectively changed the search incident to arrest doctrine of New York v. Belton, 453 U.S. 454 (1981), in the context of motor vehicles.

The court has held that police are authorized to search a vehicle incident to the arrest of a recent occupant **only if** (1) the arrestee is within reaching distance of the passenger compartment at the time of the search; or (2) there is reason to believe that the vehicle contains evidence **of the offense of arrest**.

Absent one of these two situations, a search of the passenger compartment of the vehicle will be unreasonable unless the police obtain a warrant or show that another exception to the warrant requirement applies.

This decision applies now and it marks a **major change in application of the Belton rule**, which has come to commonly be understood as allowing a search of the interior compartment of a vehicle incident to the arrest of a recent occupant even when there is no realistic possibility that the arrestee could gain access to the vehicle, and there is no specific reason to believe that the vehicle contains evidence of a crime.