

Searching for Reasonableness—The Supreme Court Revisits the Fourth Amendment

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Introduction

In the 2009 term of court, the Supreme Court issued three major Fourth Amendment opinions that significantly changed Fourth Amendment precedent.¹ At first glance, the Supreme Court's three Fourth Amendment cases appeared to pull the Fourth Amendment in different directions. The first two cases dealt with two well-known Fourth Amendment doctrines, the *Terry* frisk² and search incident to arrest,³ as applied to vehicles. In *Arizona v. Johnson*, the Court provided a clear and easy test for law enforcement to use when they conduct a *Terry* frisk incident to a traffic stop.⁴ In *Arizona v. Gant*, the Court restricted law enforcement's use of vehicle searches incident to arrests of individuals.⁵ In the third case, *Herring v. United States*, the Court limited the exclusionary rule's application to Fourth Amendment violations based on police negligence.⁶ Although the three cases appear to both shrink and expand Fourth Amendment

protection to various degrees, a closer look demonstrates a greater theme that makes all three cases consistent: reasonableness.⁷

*Arizona v. Johnson*⁸—Applying *Terry* to Vehicles

In *Johnson*, three police officers made a traffic stop at 9:00 p.m. for a suspended registration, a civil infraction, following a license plate check. The officers were in an area known for gang activity, but the officers had no reason to suspect anyone in the car of criminal activity. There were three occupants in the car, and during the stop, each officer focused on a separate passenger. Johnson was in the backseat and looked suspicious to one of the officers. He was wearing gang-affiliated clothing and had a police scanner in his pocket, which "struck [the officer] as highly unusual and cause [for] concern."⁹ After some questioning revealed Johnson may have gang affiliations, the officer asked him to exit the vehicle so she could ask him questions about his gang affiliations outside of the hearing of the other vehicle occupants. When Johnson exited the vehicle, the officer "suspected that 'he might have a weapon on him'" and "patted him down for officer safety."¹⁰ The officer's suspicion was based on "Johnson's answers to her questions while he was still seated in the car."¹¹ The officer conducted a patdown and felt a gun in Johnson's waistband; a struggle ensued, and Johnson was handcuffed and arrested. Johnson was later convicted of unlawful possession of a weapon by a prohibited possessor. The Court of Appeals of Arizona reversed the conviction, and the Arizona Supreme Court denied review of the case.¹²

The Supreme Court unanimously held the officer made a lawful *Terry* stop prior to the frisk.¹³ The Court began its

¹ See *Arizona v. Gant*, 129 S. Ct. 1710 (2009); *Arizona v. Johnson*, 129 S. Ct. 781 (2009); *Herring v. United States*, 129 S. Ct. 695 (2009). The Supreme Court issued one other Fourth Amendment-related opinion last year, but it is not covered in this paper because it is inapplicable to military justice. In *Pearson v. Callahan*, 129 S. Ct. 808 (2009), the Court examined the process used to evaluate qualified immunity claims for police officers alleged to have violated the Fourth Amendment. The Fourth Amendment issue in the case involved the consent-once-removed doctrine, which permits police to enter a home without a warrant after consent to enter was given to an undercover police officer or an informant, who then observed contraband in plain view in the home. *Id.* at 814. The Court did not make a definitive finding on the consent-once-removed doctrine, only noting that a circuit split on the issue would not prevent a police officer from relying on the doctrine to support a qualified immunity claim. *Id.* at 823.

² The *Terry* doctrine allows police officers to conduct an investigatory stop and frisk of an individual without a warrant or probable cause. See *Terry v. Ohio*, 392 U.S. 1 (1968); MANUAL FOR COURTS-MARTIAL, UNITED STATES, MIL. R. EVID. 314(f) [hereinafter MCM].

³ The search incident to arrest doctrine allows law enforcement to search an arrestee to protect the arresting officer and preserve evidence. MCM, *supra* note 2, MIL. R. EVID. 314(g). See also *Chimel v. California*, 395 U.S. 752, 755–63 (1969) (articulating the scope of the search incident to arrest rule after examining the development of the principles behind the rule, beginning with *Weeks v. United States*, 232 U.S. 383 (1914)).

⁴ *Johnson*, 129 S. Ct. at 784 (holding that the first prong of the *Terry* test, a lawful investigatory stop, is met whenever police "detain an automobile and its occupants pending inquiry into a vehicular violation").

⁵ *Gant*, 129 S. Ct. at 1723 (allowing searches incident to 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").

⁶ *Herring*, 129 S. Ct. at 702 (finding that nonrecurring and nonattenuated negligence by a police employee was not enough to trigger application of the exclusionary rule).

⁷ "The touchstone of the Fourth Amendment is reasonableness." *Florida v. Jimeno*, 500 U.S. 248, 250 (1991) (citing *Katz v. United States*, 389 U.S. 347, 360 (1967)).

⁸ 129 S. Ct. 781 (2009).

⁹ *Id.* at 784–85.

¹⁰ *Id.* at 785.

¹¹ *Id.* *Johnson* told the officer where he was from, which was an area known for gang activity, and that he was released from jail about one year earlier after serving a sentence for burglary. *Id.*

¹² *Id.*

¹³ *Id.* at 788 (reversing the Court of Appeals of Arizona).

analysis by reviewing the *Terry* doctrine. It explained that a “stop and frisk” is

constitutionally permissible if two conditions are met. First, the investigatory stop must be lawful. That requirement is met . . . when the police officer reasonably suspects that the person apprehended is committing or has committed a criminal offense. Second, to proceed from a stop to a frisk, the police officer must reasonably suspect that the person stopped is armed and dangerous.¹⁴

The precise issue in the case was whether or not the officer properly met the first prong of the *Terry* test.¹⁵ Because the officers did not suspect the car’s occupants of any criminal activity, they would normally fail the first prong of *Terry*. In *Brendlin v. California*,¹⁶ however, the Court found that “for the duration of a traffic stop . . . a police officer effectively seizes ‘everyone in the vehicle,’ the driver and all passengers.”¹⁷ Based on *Brendlin*, the Court held that the first *Terry* prong “is met whenever it is lawful for police to detain an automobile and its occupants pending inquiry into a vehicular violation. The police need not have, in addition, cause to believe any occupant of the vehicle is involved in criminal activity.”¹⁸ Regarding the second prong of *Terry*, the Court said the *Terry* analysis remained the same: “police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.”¹⁹

The Arizona Court of Appeals had agreed that the officer made a lawful detention of Johnson during the traffic stop²⁰ but found that the officer failed the first prong of *Terry* because that detention “evolved into a separate, consensual encounter stemming from an unrelated investigation by [the officer] of Johnson’s possible gang affiliation.”²¹ The Supreme Court easily dismissed this segmenting of Johnson’s traffic stop into different phases. “An officer’s inquiries into matters unrelated to the

justification for the traffic stop . . . do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop.”²² The Court provided clear guidance on when this lawful seizure ends; “[n]ormally, the stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave.”²³ In this case in particular, the Court found “[n]othing occurred . . . that would have conveyed to Johnson that, prior to the frisk, the traffic stop had ended or that he was otherwise free ‘to depart without police permission.’”²⁴

The unanimous *Johnson* opinion is the only one of last term’s three Fourth Amendment cases that provides a clear, easy to apply rule for law enforcement. Recognizing the unpredictability and unique nature of traffic stops, the Court reasonably held that the first prong of *Terry* is met during all traffic stops. Law enforcement officers in the field will not have to guess whether or not someone in the vehicle is committing, or has committed, a criminal offense; they only have to show that the traffic stop was lawful. Even though officers—and prosecutors—will still have to articulate a reasonable suspicion that the person they frisked was armed and dangerous, the *Johnson* holding should remove some unpredictability in Fourth Amendment *Terry* litigation. The same cannot be said for the Court’s other two cases. *Arizona v. Gant* and *Herring v. United States*, both 5-4 decisions, also used a reasonableness-based approach to the Fourth Amendment, but applying their holdings requires more fact-specific analyses to determine whether a Fourth Amendment violation has occurred.

***Arizona v. Gant*²⁵—An Apparent Bright-line Rule Disappears**

Gant was arrested based on an outstanding arrest warrant for driving with a suspended license. He was arrested after he drove up to a residence, left his vehicle, and moved ten to twelve feet away from the vehicle.²⁶ After he was arrested, handcuffed, and locked in the back of a patrol car, two police officers searched *Gant*’s car.²⁷ They found a

¹⁴ *Id.* at 784 (citing *Terry v. Ohio*, 392 U.S. 1 (1968)).

¹⁵ *Id.* at 784–85 (noting that the Arizona Court of Appeals did not find a lawful investigatory stop, but rather a consensual encounter).

¹⁶ 551 U.S. 249 (2007).

¹⁷ *Johnson*, 129 S. Ct. at 784 (citing *Brendlin*, 551 U.S. at 255).

¹⁸ *Id.*; see also *Pennsylvania v. Mimms*, 434 U.S. 106 (1977) (holding police may order the driver to exit a lawfully stopped vehicle); *Maryland v. Wilson*, 519 U.S. 407 (1997) (extending the *Mimms* rule to passengers).

¹⁹ *Johnson*, 129 S. Ct. at 784. The Court did not make a specific finding on the second prong: “We do not foreclose the appeals court’s consideration of [whether the officer had reasonable suspicion that Johnson was armed and dangerous] on remand.” *Id.* at 788.

²⁰ *Arizona v. Johnson*, 170 P.3d 667, 671 (Ariz. Ct. App. 2007).

²¹ *Id.* at 673.

²² *Johnson*, 129 S. Ct. at 788.

²³ *Id.*

²⁴ *Id.* (quoting *Brendlin v. California*, 551 U.S. 249, 257 (2007)).

²⁵ 129 S. Ct. 1710 (2009).

²⁶ The officers had seen *Gant* at the house earlier in the day when they investigated an anonymous tip that someone was selling drugs there. After leaving the house, the officers ran *Gant*’s name in their database and discovered the warrant. When the officers returned to the house later that night, *Gant* pulled up in his car, at which time the officers arrested him for the suspended license. *Id.* at 1714–15.

²⁷ *Id.* at 1715. *Gant* was locked in the back of a patrol car even after backup officers arrived on scene. *Id.*

gun and a bag of cocaine in a jacket pocket. After being charged with possession of drugs and drug paraphernalia, the defense moved to suppress the drugs because of the warrantless search. During the suppression hearing, one of the police officers said they conducted the search of the car “[b]ecause the law says we can do it.”²⁸

The police officer’s matter of fact statement about why the police could search Gant’s car incident to his arrest was based on a broad and common interpretation of two key Supreme Court cases. In *Chimel v. California*,²⁹ the Court held that a police officer could search “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.”³⁰ This rule allowed a limited search “commensurate with its purposes of protecting officers and safeguarding any evidence of the offense of arrest that an arrestee might conceal or destroy.”³¹ Under this rationale, “[i]f there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search, both justifications for the search-incident-to-arrest exception are absent and the rule does not apply.”³²

The Supreme Court applied the two prongs of *Chimel*—officer safety and preserving evidence—to an automobile in *New York v. Belton*.³³ In *Belton*, a police officer stopped a car for speeding.³⁴ During the stop, the officer developed probable cause to believe the four occupants had committed a drug offense.³⁵ The officer arrested the four occupants for possession of marijuana, and separated them into different areas on the side of the road. While the arrestees were separated, the officer searched each individual, and also searched the vehicle incident to arrest, finding cocaine during the vehicle search.³⁶ The Supreme Court in *Belton* held that after a police officer arrests a vehicle’s occupant, he “may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile,” including “the contents of any containers found within the passenger compartment.”³⁷

²⁸ *Id.*

²⁹ 395 U.S. 752 (1969).

³⁰ *Id.* at 763.

³¹ *Gant*, 129 S. Ct. at 1716.

³² *Id.*

³³ 453 U.S. 454 (1981).

³⁴ *Id.* at 455.

³⁵ *Id.* at 455–56. The officer “smelled burnt marihuana” in the car and saw an envelope on the floor of the car with the name “Supergold” on it, which he knew was a slang term for marijuana. *Id.*

³⁶ *Id.* at 456.

³⁷ *Id.* at 460. The Court extended the reach of *Belton* to “recent occupants” of a vehicle in *United States v. Thornton*. 541 U.S. 615, 617 (2004)

The issue in *Gant* was the proper reach and scope of a vehicle search incident to arrest under *Chimel* and *Belton*. The Court acknowledged that *Belton* “has been widely understood to allow a vehicle search incident to the arrest of a recent occupant even if there is no possibility the arrestee could gain access to the vehicle at the time of the search.”³⁸ Essentially, lower courts read *Belton* as a justification for a broad search of a vehicle incident to arrest without requiring one of the two prongs of *Chimel* as a trigger for the lawful search.³⁹ This broad reading of *Belton* was “widely taught in police academies and . . . law enforcement officers have relied on the rule in conducting vehicle searches during the past 28 years.”⁴⁰ Even though this broad reading became an apparent bright-line rule allowing searches of vehicles in most situations—remember, the police officer in *Gant* said he performed the search “[b]ecause the law says we can do it”—the *Gant* Court applied a narrower and more reasonable interpretation of *Chimel* and *Belton*. *Gant* used a straightforward application of those two cases, holding that “[p]olice 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.”⁴¹ Based on this analysis, the Court found the search of Gant’s car unreasonable.⁴²

The *Gant* holding is a clear requirement that one of the two prongs of *Chimel*, either officer safety or protecting evidence, must be met before the broad search authority under *Belton* is applicable. Both *Chimel* and *Belton* are still good law, but *Gant*’s interpretation of them means they will be applied differently in the future. This new *Chimel-Belton* analysis is not a concerted effort to remove police search authority; it is simply a more reasonable approach to Fourth Amendment analysis. The *Gant* majority realized it was a constitutional fiction to find a search lawfully because the location of the search was a vehicle. The Court realized a broad reading of *Belton* that always allowed searches did not really further the two prongs of *Chimel*:

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

(holding “*Belton* governs even when an officer does not make contact until the person arrested has left the vehicle”).

³⁸ *Arizona v. Gant*, 129 S. Ct. 1710, 1718 (2009).

³⁹ *Id.* (attributing the broad reading of *Belton* to Justice Brennan’s dissent in the case, which said the majority relied on a “fiction . . . that the interior of a car is *always* within the immediate control of an arrestee who has recently been in the car”) (quoting *Belton*, 453 U.S. at 466).

⁴⁰ *Id.* at 1722.

⁴¹ *Id.* at 1723.

⁴² *Id.* at 1724.

arrest so that a real possibility of access to the arrestee's vehicle remains.⁴³

....

A rule that gives police the power to conduct such a search whenever an individual is caught committing a traffic offense, when there is no basis for believing evidence of the offense might be found in the vehicle, creates a serious and recurring threat to the privacy of countless individuals.⁴⁴

Although *Gant* is interpreted as severely restricting law enforcement's ability to search vehicles,⁴⁵ *Gant* points out that a bright-line rule "serve[s] no purpose except to provide a police entitlement, and it is anathema to the *Fourth Amendment* to permit a warrantless search on that basis."⁴⁶

Despite the Court's seemingly reasonable application of *Chimel* and *Belton* to vehicle searches incident to arrest, *Gant* was only a 5-4 decision, with Justice Scalia's concurrence providing the deciding vote.⁴⁷ Justice Scalia preferred to overrule *Belton* because the "reaching distance" rule "fails to provide the needed guidance to arresting officers and also leaves much room for manipulation, inviting officers to leave the scene unsecured (at least where dangerous suspects are not involved) in order to conduct a

vehicle search."⁴⁸ Justice Scalia preferred to only allow searches for evidence related to the crime for which an individual was arrested; he stated, "I would hold in the present case that the search was unlawful."⁴⁹ Justice Scalia realized that "[n]o other Justice, however, shares my view" but felt it was "unacceptable for the Court to come forth with a 4-to-1-to-4 opinion that leaves the governing rule uncertain."⁵⁰ Justice Scalia therefore concurred with the majority because the dissent's broad, bright-line rule reading of *Belton* "opens the field to what I think are plainly unconstitutional searches."⁵¹

Although *Gant* uses a very reasonable interpretation of Fourth Amendment principles consistent with those discussed in *Chimel* and *Belton*, the practical effect of the holding will require some adjustment by law enforcement and prosecutors.⁵² The prior bright-line rule that always allowed searches of vehicles incident to arrest certainly reduced the amount of issues subject to litigation, even if it was likely to allow unconstitutional searches. Now, law enforcement officers in the field, and prosecutors in the courtroom, will need to carefully analyze the facts of each case to determine when there is a reasonable basis to conduct a search incident to arrest. To re-phrase the police officer's testimony in *Gant*, "the law says we might be able to search."⁵³

***Herring v. United States*⁵⁴—When the Exclusionary Rule Does Not Exclude**

When Herring, "no stranger to law enforcement," arrived at the Coffee County Sheriff's Department to get some items from his impounded vehicle, Investigator Anderson asked the warrant clerk to check for outstanding warrants.⁵⁵ Finding none, Anderson asked the clerk to check with neighboring Dale County, which reported an active

⁴³ *Id.* at 1719 n.4. Justice Scalia's concurrence made this point even more clearly. "[P]olice virtually always have a less intrusive and more effective means of ensuring their safety—and a means that is virtually always employed: ordering the arrestee away from the vehicle, patting him down in the open, handcuffing him, and placing him in the squad car." *Id.* at 1724 (Scalia, J., concurring).

⁴⁴ *Id.* at 1720.

⁴⁵ See, e.g., Richard G. Schott, *The Supreme Court Reexamines Search Incident to Lawful Arrest*, FBI LAW ENFORCEMENT BULL., Jul. 2009, at 22 ("After having what was considered a bright-line rule for almost 30 years . . . the Supreme Court decided . . . that this search is not subject to such a bright-line rule after all."); Jason Schuck, *The Impact of Arizona v. Gant*, LAW OFFICER.COM, Apr. 23, 2009, http://www.lawofficer.com/news-and-articles/columns/lexisnexis/arizona_v_gant.html ("The long-standing *Belton* rule has been severely curtailed and many searches that would previously have been upheld would now likely be found unconstitutional."). Cf. Mark M. Neil, *The Impact of Arizona v. Gant: Limiting the Scope of Automobile Searches?*, BETWEEN THE LINES (Nat'l Dist. Att'y Ass'n/Nat'l Traffic Law Ctr., Alexandria, Va), Fall 2009, at 1 ("In short, the holding in *Arizona v. Gant* is not an overly burdensome one on law enforcement. While it certainly limits the prior practices of officers conducting wide-ranging searches incident to an arrest of an occupant of a motor vehicle, it does still permit those searches under more defined circumstances.")

⁴⁶ *Gant*, 129 S. Ct. at 1721.

⁴⁷ *Id.* at 1724–25 (Scalia, J., concurring). The four dissenting Justices would have preferred to keep the broad reading of *Belton* that allowed for a bright-line rule that police could apply. *Id.* at 1726–32. Justice Alito's dissent notes the majority's holding is "truly endorsed by only four Justices; Justice Scalia joins solely for the purpose of avoiding a "4-to-1-to-4" opinion." *Id.* at 1726 (Alito, J., dissenting).

⁴⁸ *Id.* at 1724–25 (Scalia, J., concurring).

⁴⁹ *Id.* at 1725 (noting that there would be no evidence of the crime *Gant* was arrested for, driving without a license, in the vehicle).

⁵⁰ *Id.*

⁵¹ *Id.* (calling the option presented by the dissent a "greater evil").

⁵² Judge advocates should be aware that the *Gant* holding significantly affects MRE 314(g)(2), which articulated the bright-line rule eliminated by *Gant*. See MCM, *supra* note 2, MIL. R. EVID. 314(g)(2) ("the passenger compartment of an automobile, and containers within the passenger compartment may be searched as a contemporaneous incident of the apprehension of an occupant of the automobile, regardless whether the person apprehended has been removed from the vehicle.")

⁵³ The police officer in *Gant* testified at the motion hearing that they conducted the search of *Gant*'s car "[b]ecause the law says we can do it." *Gant*, 129 S. Ct. at 1715.

⁵⁴ 129 S. Ct. 695 (2009).

⁵⁵ *Id.* at 698.

felony arrest warrant. Anderson asked to have it faxed over and then left with a deputy to arrest Herring. When they searched Herring incident to his arrest, they found methamphetamine in his pocket and a pistol in his vehicle (Herring was a felon and not allowed to possess a weapon). In the ten to fifteen minutes it took Anderson to follow Herring and arrest him, however, Dale County called back to say they had made a mistake. There was no arrest warrant; it had been rescinded, but a filing error made the warrant still appear active in the police computer database.⁵⁶

The parties in *Herring* agreed that the warrantless arrest of Herring violated the Fourth Amendment,⁵⁷ but disagreed whether the exclusionary rule should apply to evidence discovered in the search incident to that arrest. The exact issue in the case was whether the exclusionary rule applied when a police “officer reasonably believes there is an outstanding arrest warrant, but that belief turns out to be wrong because of a negligent bookkeeping error by another police employee.”⁵⁸ The Eleventh Circuit did not exclude the evidence, because it found the arresting officers “were entirely innocent of any wrongdoing or carelessness” and there would be no deterrent effect by applying the rule.⁵⁹ Because other circuits excluded evidence in similar cases involving police error, the Supreme Court granted certiorari.⁶⁰

In *Arizona v. Evans*,⁶¹ the Court did not apply the exclusionary rule when police reasonably relied in good faith on a court database showing a current arrest warrant, even though there was no warrant.⁶² *Herring* looked at three reasons why the error by a court official in *Evans* did not trigger the exclusionary rule: “The exclusionary rule was crafted to curb police rather than judicial misconduct; court employees were unlikely to try to subvert the Fourth Amendment; and [the rule would not] have any significant effect in deterring the errors.”⁶³ In *Herring*, the Court analyzed whether the rationale supporting *Evans* would hold true for errors made by police, and not court, personnel.⁶⁴ The Court noted the exclusionary rule was not an automatic consequence of every Fourth Amendment violation; rather, it depended “on the culpability of the police and the

potential of exclusion to deter wrongful police conduct.”⁶⁵ The Court found that the officers in *Herring* “did nothing improper”⁶⁶ and “[t]o trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system.”⁶⁷ The *Herring* Court affirmed the Eleventh Circuit and found the exclusionary rule did not apply.⁶⁸

Herring does not give law enforcement a “free pass” to perform shoddy warrant practices and then claim good-faith reliance. The Court’s holding only says that “nonrecurring and attenuated negligence” would not trigger the rule.⁶⁹ It also provides guidance about what type of police negligence would trigger the exclusionary rule: “If police have been shown to be reckless in maintaining a warrant system, or to have knowingly made false entries to lay the groundwork for future false arrests, exclusion would certainly be justified under our cases should such misconduct cause a Fourth Amendment violation.”⁷⁰ Therefore, “deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence” by police would still trigger the exclusionary rule.⁷¹

Although *Herring*’s holding was a reasonable approach to the exclusionary rule, it was only a 5-4 decision. The dissent favored “a more majestic conception”⁷² of the exclusionary rule, which would not “constrict the domain of the exclusionary rule.”⁷³ The dissent felt the rule was particularly applicable in the area of criminal electronic databases, which “form the nervous system of contemporary criminal justice operations”⁷⁴ and “are insufficiently monitored and often out of date.”⁷⁵

Johnson, Gant, Herring and Reasonableness

The common theme in the past year’s three Supreme Court cases on the Fourth Amendment is reasonableness. The opinions did not represent a concerted effort by the Court to expand or contract the Fourth Amendment. Instead,

⁵⁶ *Id.*

⁵⁷ *Id.* at 699.

⁵⁸ *Id.* at 698.

⁵⁹ *United States v. Herring*, 492 F.3d 1212, 1218 (2007) (relying on the good-faith rule of *United States v. Leon*, 468 U.S. 897 (1984)).

⁶⁰ *Herring*, 129 S. Ct. at 699.

⁶¹ 514 U.S. 1 (1995).

⁶² *Id.* at 15.

⁶³ *Herring*, 129 S. Ct. at 701.

⁶⁴ *Id.*

⁶⁵ *Id.* at 698.

⁶⁶ *Id.* at 700.

⁶⁷ *Id.* at 702.

⁶⁸ *Id.* at 698.

⁶⁹ *Id.* at 702.

⁷⁰ *Id.* at 703.

⁷¹ *Id.* at 702.

⁷² *Id.* at 707 (Ginsburg, J., dissenting).

⁷³ *Id.* at 705 (Ginsburg, J., dissenting).

⁷⁴ *Id.* at 708 (Ginsburg, J., dissenting).

⁷⁵ *Id.* at 709 (Ginsburg, J., dissenting).

they ensured that the Fourth Amendment is reasonably applied. *Johnson* did not make it easier for police to conduct “stop and frisks” during vehicle stops; it simply provided a reasonable analysis of how the first prong of the *Terry* doctrine should be applied to those stops. By calling any vehicle stop a lawful investigatory stop under *Terry*, the Court simply made a reasonable determination that when all of the occupants of a vehicle are “seized” under *Brendlin*, they are also lawfully detained under *Terry*. In *Gant*, the Court’s 5-4 opinion eliminated an apparent bright-line rule for searches of vehicles incident to arrest. The majority, however, showed that the bright-line rule was actually an unreasonable interpretation of *Chimel* and *Belton* that led to

unconstitutional searches. Lastly, *Herring* did not eliminate or ignore the exclusionary rule; it simply looked to the core function of the rule—deterring police misconduct—and determined what types of negligence were severe enough to warrant exclusion. Law enforcement personnel and prosecutors should not have a problem applying the *Johnson* holding to vehicle stops, but they will need to pay close attention to the facts and circumstances of a case when applying the new rules announced in *Gant* and *Herring*.