

EXAMINERS' ANALYSIS OF QUESTION NO. 12

Defense counsel should argue that, while search incident to arrest is one of the many exceptions to the warrant requirement, the facts do not support that exception. The purpose of the exception is to primarily prevent a person arrested from reaching for and/or having access to either (1) a weapon that might be used against an arresting officer, or (2) evidence the arrested person may wish to destroy. As a result, an officer may search incident to arrest, only the space within an arrestee's immediate control, meaning the area from within he might gain possession of a weapon or destructible evidence.

Applying these principles to the facts at hand, yields the argument that the search of Driver's vehicle and the resultant seizure of the drugs and gun should not be justified by the search incident to arrest exception to the warrant requirement. Counsel should argue (1) the Camaro was a number of feet from Driver, (2) Driver was in handcuffs, (3) Driver was in the backseat of a locked police car, and (4) Jones stood by the car in which Driver had been placed. These facts, counsel should argue, eliminate for all practical purposes any concern that Driver had access to an area (the backseat of the Camaro) from which he could obtain the drugs or gun, thereby undermining the purpose of the exception. The same argument could be made by Driver regarding Patty.

The judge should sustain Defendant's position. The salient facts and issues are largely indistinguishable from the United State Supreme Court's decision in *Arizona v Gant*, 556 US 332 (2009). *Gant* returned the focus of the search incident to arrest exception to the limitations articulated in *Chimel v California*, 395 US 752 (1969), and rejected the broadened view espoused in *New York v Belton*, 453 US 454 (1981). Because neither Driver nor Patty had any real access to their car, the search incident to arrest exception will not advance the People's position. *Gant* controls the court's decision.

Gant allowed the search incident to arrest exception to satisfy the Fourth Amendment's dictates in two scenarios: (1) where--as stated--the area searched is within the "reaching distance" of the arrestee for weapons or destructible evidence, and (2) where in the automobile context it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle.

Because neither justification applies, this exception is inapplicable. Driver and Patty no longer had access to the vehicle and the facts are silent as to what possible evidence of either speeding or driving without a license could reasonably be believed to be in the Camaro.

Because the stop of the vehicle and the arrest of Driver (and the detention of Patty) were valid, does not make the warrantless search valid. After all, the evidence seized does not flow from the stop or arrest of Driver, but rather from the search of his jacket in this car. Without justification for that search and seizure, the evidence must be suppressed.