

## POLICE OFFICERS' KNOWLEDGE OF GANT

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*The U.S. Supreme Court's decision in Arizona v. Gant fundamentally altered the law governing police searches of vehicles incident to the arrest of a vehicle occupant. To date, there has been no empirical examination of Gant's impact on line officers. The present study does so using data from a survey of police officers that assessed their ability to apply Gant. Although 93 percent of the officers had been taught Gant and 77 percent had received training within*

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the twelve months prior to completing the survey, 67 percent incorrectly applied *Belton*, rather than *Gant*. Moreover, nearly half of the sample were missing constitutionally permissible opportunities to search the vehicle under either of *Gant*'s two prongs. Concerningly, officers who had received recent training on vehicle searches were significantly less likely to identify correct search protocols under *Gant*'s evidence prong. The implications of these findings are discussed.

**Keywords:** *vehicle searches, Fourth Amendment, police searches, search incident to arrest, police training*

## INTRODUCTION

The Fourth Amendment to the U.S. Constitution provides that the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . .”<sup>1</sup> The reasonableness of a search has been developed and refined over time.<sup>2</sup> Some Fourth Amendment areas—such as determining when police officers can conduct warrantless searches of motor vehicles,<sup>3</sup> containers within vehicles,<sup>4</sup> and vehicle searches incident to the arrest of a recent occupant

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1. U.S. CONST. amend. IV.

2. See, e.g., Christopher D. Totten & James A. Purdon, *A Content Analysis of Post-Jones Federal Appellate Cases: Implications of Jones for Fourth Amendment Search Law*, 20 NEW CRIM. L. REV. 233, 304–05 (2017) (concluding that the *Jones* property-based approach allowed for “less interpretive wiggle-room” compared to the “more nebulous and imprecise” *Katz* reasonable expectation of privacy approach in determining if a search occurred); see generally THOMAS N. MCINNIS, *THE EVOLUTION OF THE FOURTH AMENDMENT* (2009) (tracing the changing interpretations of search and seizure jurisprudence).

3. E.g., *Carroll v. United States*, 267 U.S. 132, 153 (1925) (holding warrantless searches of motor vehicles for contraband are permissible when supported by probable cause because “it is not practicable to secure a warrant” when vehicles, by their nature, “can be quickly moved out of the locality or jurisdiction in which the warrant must be sought”); *Chambers v. Maroney*, 399 U.S. 42, 51 (1970) (clarifying that searches under *Carroll* are evaluated at the time a vehicle is seized, even if the actual search occurs later).

4. *United States v. Ross*, 456 U.S. 798, 825 (1982) (extending *Carroll* to warrantless searches supported by probable cause of “every part of the vehicle and its contents that may conceal the object of the search,” including closed containers or packages); *California v. Acevedo*, 500 U.S. 565 (1991) (holding warrantless searches of containers in motor vehicles are permissible when police have probable cause to believe that the container holds evidence).

(VSIARO) of that vehicle—have morphed significantly over the years. This article focuses on the latter by examining police practices under *New York v. Belton*<sup>5</sup> and *Arizona v. Gant*.<sup>6</sup>

*Gant* held that police are able to conduct a VSIARO either (1) when the individual under arrest is unsecured and, therefore, presents a potential safety risk on account of their ability to reach inside the passenger compartment; or (2) to preserve evidence relevant to the crime for which the arrest is being made.<sup>7</sup> The decision attempted to balance the needs of police officers<sup>8</sup> and the privacy of arrestees.<sup>9</sup>

Two studies previously examined police chiefs' knowledge of *Gant*,<sup>10</sup> but there have been no evaluations of line officers' understanding of the shift from *Belton* to *Gant*. The present study addresses this gap by providing insights into police officers' understanding of VSIAROs a decade after *Gant* altered the rules for such searches.

Part I of this article provides the background on VSIAROs with a summary of the governing constitutional principles both before and after the *Gant* decision. Part II explains the methodology of this study. Part III reports the key findings. Part IV examines the implications of the findings. And Part V concludes with recommendations for improving police practice.

## I. SEARCHES INCIDENT TO ARREST AT VEHICLE

### A. Jurisprudence of Vehicle Searches Incident to an Arrest

Prior to *Gant*, the leading precedent governing VSIAROs was *New York v. Belton*.<sup>11</sup> However, an important decision and progenitor of both *Belton*

5. *New York v. Belton*, 453 U.S. 454, 460 (1981).

6. *Arizona v. Gant*, 556 U.S. 332, 343 (2009).

7. *Id.* at 343.

8. These tools both enhance police officer safety by allowing them to search the vehicle when the arrestee is unsecured and increase evidence finding procedures when police have reason to believe that the search will produce evidence. *Id.* at 343.

9. *Id.*

10. See Christopher D. Totten & Sutham Cobkit, *Police Vehicle Searches Incident to Arrest: Evaluating Chiefs' Knowledge of Arizona v. Gant*, 11 N.Y.U. J.L. & LIBERTY 257, 273–76 (2017) [hereinafter Totten & Cobkit, *Chiefs' Knowledge*]; see also Christopher D. Totten & Sutham Cobkit, *Police Vehicle Searches Under the Fourth Amendment: Evaluating Chiefs' Perceptions of Search Policies and Practices after Arizona v. Gant*, 41 MANITOBA L.J. 49 (2018) [hereinafter Totten & Cobkit, *Chiefs' Perceptions*].

11. *New York v. Belton*, 453 U.S. 454, 460 (1981). An in-depth review of the historical jurisprudence of vehicle searches is beyond the scope of this article. For a comprehensive

and *Gant* came in the 1969 case of *Chimel v. California*.<sup>12</sup> In that case, police officers had obtained an arrest warrant for Chimel, arrived at his residence, and were granted permission to enter the residence by Chimel's wife to wait for him to return home.<sup>13</sup> Upon Chimel's return, the officers arrested him for burglary. Officers then sought and were denied permission to "look around" the house; nonetheless, they searched the premises and seized items that were subsequently used against Chimel.<sup>14</sup> The Supreme Court invalidated the search, stating:

An arresting officer may search the arrestee's person to discover and remove weapons and to seize evidence to prevent its concealment or destruction, and may search the area "within the immediate control" of the person arrested, meaning the area from which he might gain possession of a weapon or destructible evidence.<sup>15</sup>

*Chimel* significantly influenced search jurisprudence for the next fifty years, including serving as the foundation for *Belton*.

In *Belton*, a state trooper stopped a speeding vehicle.<sup>16</sup> The officer discovered none of the four occupants owned the vehicle. The officer also smelled marijuana and saw an envelope containing material that resembled marijuana.<sup>17</sup> He directed the occupants to exit the vehicle, arrested them, and then searched each occupant and the entirety of the vehicle—including a jacket located in the back seat.<sup>18</sup> The officer found cocaine inside one of the jacket's pockets.<sup>19</sup> *Belton* pleaded guilty to a lesser offense after his motion to suppress the evidence was denied, "but preserved his claim that the cocaine had been seized in violation of the Fourth and Fourteenth Amendments."<sup>20</sup> The U.S. Supreme Court ultimately upheld the search, explaining that "[t]he jacket was located inside the passenger compartment

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discussion of the historical context surrounding vehicle search jurisprudence, see Scott R. Grubman, *Bark with No Bite: How the Inevitable Discovery Rule is Undermining the Supreme Court's Decision in Arizona v. Gant*, 101 J. CRIM. L. & CRIMINOLOGY 119, 121–57 (2011).

12. *Chimel v. California*, 395 U.S. 752 (1969).

13. *Id.* at 753.

14. *Id.* at 753–54.

15. *Id.* at 762–63.

16. *New York v. Belton*, 453 U.S. 454, 455 (1981).

17. *Id.* at 456.

18. *Id.*

19. *Id.*

20. *Id.*

of the car in which the respondent had been a passenger just before he was arrested. The jacket was thus within the area which we have concluded was ‘within the arrestee’s immediate control’ within the meaning of the *Chimel* case.”<sup>21</sup> The Court in *Belton* set forth the following rule concerning VSIAROs:

[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. It follows from this conclusion that the police may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach.<sup>22</sup>

This unrestricted approach to VSIAROs remained the governing law until *Gant*.<sup>23</sup>

In *Gant*, two police officers received an anonymous tip that a home was being used for distributing drugs.<sup>24</sup> After they arrived at the home, *Gant* answered the door and explained to the officers that the homeowner was out, but would return later that day. Officers returned to the house that evening whereupon they arrested two individuals for possessing drug paraphernalia and secured each of them in separate patrol cars.<sup>25</sup> *Gant* then returned to the home, driving a vehicle into the driveway. During the intervening time, the officers had run a check on *Gant* and discovered that there was an outstanding arrest warrant for his driving with a suspended license. *Gant* parked the vehicle at the end of the driveway, stepped outside of the car, and closed the door behind him.<sup>26</sup> He headed toward one of the officers at the officer’s request. This put *Gant* approximately “10-to-12 feet” from his vehicle as he approached the officers.<sup>27</sup> Officers handcuffed *Gant*, secured him in the backseat of a patrol car, and then searched *Gant*’s

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21. *Id.* at 463.

22. *Id.* at 460. The Court also relied on *United States v. Robinson*, 414 U.S. 218, 235 (1973), which held that “[t]he authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect.”

23. Grubman, *supra* note II, at 157.

24. *Arizona v. Gant*, 556 U.S. 332, 335 (2009).

25. *Id.* at 336.

26. *Id.*

27. *Id.*

vehicle. They found a firearm and a bag of cocaine, resulting in Gant being charged with “possession of a narcotic drug for sale and possession of drug paraphernalia.”<sup>28</sup>

Gant sought to suppress the firearm and cocaine by arguing “*Belton* did not authorize the search of [Gant’s] vehicle because he posed no threat to the officers after he was handcuffed in the patrol car and because he was arrested for a traffic offense for which no evidence could be found in the vehicle.”<sup>29</sup> The trial court disagreed. Gant was convicted and sentenced to three years’ incarceration. The Arizona Court of Appeals, the Arizona Supreme Court, and the U.S. Supreme Court ruled that the vehicle search violated the Fourth Amendment.<sup>30</sup> Thus, the Court retreated from *Belton*, ruling VSIAROs are authorized “only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search”<sup>31</sup> or when “it is reasonable to believe the vehicle contains evidence of the offense of arrest.”<sup>32</sup> Applying this framework, the Court determined that the officers “could not reasonably have believed either that Gant could have accessed his car at the time of the search or that evidence of the offense for which he was arrested might have been found therein,” and as a result, held that “the search in this case was unreasonable.”<sup>33</sup> The implications of this decision effectively narrowed *Belton* by establishing a two-prong test that focuses on officer safety and evidence preservation.<sup>34</sup>

It is important to emphasize that *Gant* focuses on something different from traditional vehicle searches. Under *Carroll*, law enforcement may conduct a warrantless search of a vehicle when there is probable cause to believe the vehicle contains contraband or evidence of crime.<sup>35</sup> And under

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28. *Id.*

29. *Id.* Consequently, the State also acknowledged that Gant was unable to access the vehicle at the time of the search, but nonetheless, argued for the broad reading of *Belton*. *Id.* at 344.

30. *State v. Gant*, 43 P.3d 188 (Ariz. Ct. App. 2002), *vacated & remanded*, 540 U.S. 1096 (2003), *appeal after remand*, 143 P.3d 379 (Ariz. Ct. App. 2007), *aff’d*, 162 P.3d 640 (Ariz. 2007), *aff’d*, 556 U.S. 332, 344 (2009).

31. *Id.* at 343.

32. *Id.* at 346.

33. *Id.* at 344.

34. For an interesting discussion on whether the “safety” prong should be reconsidered along with the “emergency” prong, see Totten & Cobkit, *Chiefs’ Knowledge*, *supra* note 10, at 265 n.37.

35. *Carroll v. United States*, 267 U.S. 132 (1925).

*Acevedo*, law enforcement may conduct a warrantless search of all containers or packages within a vehicle when there is probable cause to believe they hold contraband or evidence of crime, although “[p]robable cause to believe that a container placed in the trunk of a [vehicle] contains contraband or evidence does not justify a search of the entire [vehicle].”<sup>36</sup> By contrast, *Belton* had the effect of giving law enforcement the ability to search the entirety of a vehicle—and all containers in it—without probable cause to believe the vehicle or the containers held contraband or evidence of a crime. *Belton* required only probable cause to arrest a recent vehicle occupant. Indeed, *Belton* provided police with nearly limitless ability to conduct VSIAROs regardless of the reasons supporting the arrests themselves. For example, a police officer could arrest a person for excessive speeding and then search the entirety of the vehicle. And “searches of passenger compartments of automobiles . . . were routinely deemed lawful even if the arrestee was handcuffed and nowhere near where he could access weapons or contraband inside the vehicle.”<sup>37</sup> Legal scholars commented that “[p]rior to the *Belton* decision, police ability to search a vehicle was limited to those instances which triggered the automobile exception. . . . *Belton* provided an alternative to the probable cause requirements of the automobile exception, permitting a search after any arrest.”<sup>38</sup> *Gant* narrowed *Belton*’s reach—at least in theory, as will be explored in more detail in the next section—but *Gant* did not change the probable cause requirements for vehicle and container searches under *Carroll* and *Acevedo*.

## B. The Scholarly Literature on *Gant*

Some scholars applauded *Gant* for narrowing *Belton* because it not only allowed police to conduct VSIAROs in the absence of probable cause justifying such searches, but also permitted VSIAROs absent reasonable officer safety concerns.<sup>39</sup> Perhaps the most egregious acts born from *Belton*

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36. *California v. Acevedo*, 500 U.S. 565, 580 (1991) (quoting *United States v. Ross*, 456 U.S. 798, 824 (1982)).

37. Barbara E. Armacost, *Arizona v. Gant: Does It Matter?*, 2009 SUP. CT. REV. 275, 275 (2009) (citing *Thornton v. United States*, 541 U.S. 615, 628 (2004)).

38. Michael C. Gizzi, R. Craig Curtis, & Ethan D. Boldt, *U.S. Courts of Appeals and State Supreme Court Responses to Arizona v. Gant: A Study in Judicial Impact*, 37 J. CRIME & JUST. 214, 217 (2014).

39. *E.g.*, Carson Emmons, *Arizona v. Gant: An Argument for Tossing Belton and All Its Bastard Kin*, 36 ARIZ. ST. L.J. 1067, 1079–80 (2004).

were the use of pretextual arrests for minor traffic offenses as a means to justify searches of the entirety of vehicles.<sup>40</sup> Critics hoped that *Gant* would discourage police from engaging in pretextual subterfuge and force officers to limit VSIAROs to the circumstances specified in *Gant*.

Other scholars opined that *Gant* was underwhelming in that it would not significantly impact law enforcement practices concerning VSIAROs because alternative doctrines could justify such searches.<sup>41</sup> For example, inventory searches avoid potential errors in officers' field analyses of *Gant* because police are legally permitted to conduct complete searches of vehicles, including closed containers found in vehicles, after they are impounded.<sup>42</sup> Thus, Smith and Hester predicted *Gant* would cause a spike

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40. *Id.* at 1080.

*Belton* provided an alternative for police to the probable cause requirements of the automobile exception. . . . It did not take long for law enforcement to realize. . . . [they] could develop a pretext to pull over a vehicle that they believed (either based on prior intelligence, the matching of a profile, or even a hunch) contained contraband. All they needed to do was establish probable cause for. . . any traffic violation—and they could stop the vehicle, ascertain the identification of the driver and passengers, run the driver's license for active warrants, ask questions of the occupants of the vehicle, and use their plain view power to look for the presence of contraband, or even the smell of marijuana or alcohol. . . . Over time, the Supreme Court expanded the power of police in this area by ruling that pretextual traffic stops [supported by probable cause and] done solely to conduct a criminal investigation were constitutional. . . . ; by upholding the power of the police to order passengers out of a car. . . . ; by establishing that police could place an individual in full custodial arrest for any offense, even nonjailable misdemeanors. . . . ; and even extending the scope of *Belton* searches to "recent occupants" of vehicles when the arrest did not occur at the vehicle. . . .

Gizzi et al., *supra* note 38, at 217 (citing, in order of the propositions mentioned, *Whren v. United States*, 517 U.S. 806 (1996); *Maryland v. Wilson*, 519 U.S. 408 (1987); *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001); *Thornton v. United States*, 541 U.S. 615 (2004)); *see also* *Armacost*, *supra* note 37, at 276 (2009) (noting the negative consequences of the post-*Gant* decisions).

41. Grubman, *supra* note 11, at 158, 162; *see also* Seth W. Stoughton, *Modern Police Practices: "Arizona v. Gant's" Illusory Restriction of Vehicle Searches Incident to Arrest*, 97 VA. L. REV. 1727, 1764–71 (2011).

42. *See* *South Dakota v. Opperman*, 428 U.S. 364, 372 (1976) (upholding inventory searches as reasonable under the Fourth Amendment for the purposes of securing a vehicle and safeguarding its contents); *see also* *Colorado v. Bertine*, 479 U.S. 367, 374 (1987) (extending *Opperman* to searches of containers in vehicles during inventory procedures if performed in accordance with regulations and administered in good faith). *But see* *Florida v. Wells*, 495 U.S. 1 (1990) (invalidating a search of closed containers encountered during an inventory search conducted in the absence of a police regulation or policy authorizing the opening of such containers).



in inventory searches,<sup>43</sup> and they warned police leaders to be cognizant of the possible circumvention of *Gant* in this manner.<sup>44</sup>

Stoughton also argued *Gant* would prove to be ineffective because its framework allowed officers substantially more leeway than a cursory reading of the case might initially suggest.<sup>45</sup> Stoughton argued that officers from smaller departments might be justified under the safety prong of *Gant* because it is typical for a sole officer to conduct investigations and make arrests.<sup>46</sup> The practical necessity of needing to act alone could reasonably allow an officer to articulate fear for his or her safety, thereby justifying a search. Additionally, based on Bureau of Justice Statistics data demonstrating that the majority of vehicle arrests are related to drug crimes, Stoughton posited that a substantial number of VSIAROs could be justified under *Gant*'s evidence preservation prong.<sup>47</sup>

### C. The Empirical Literature on Officer Understanding of the Fourth Amendment

The literature concerning police officers' knowledge of constitutional law is surprisingly limited to a handful of studies. Generally, research suggests police officers often lack understanding of Fourth Amendment principles and their application.<sup>48</sup> In a novel study, Heffernan and Lovely surveyed 547 officers from four mid-sized police departments to evaluate officer knowledge of constitutional rules governing search and seizure, paying

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43. See Michael R. Smith & Rhys Hester, *Arizona v. Gant and Searches of Automobiles Incident to Arrest: Analysis and Recommendations for Policy and Practice*, 34 POLICING: INT'L J. POLICE STRATEGIES & MGMT. 265, 276–78 (2011).

44. *Id.* at 278. Judges have compounded law enforcement officers' circumvention of *Gant* by combining the inventory exception with the inevitable discovery exception to the exclusionary rule, admitting evidence seized during impermissible VSIAROs because it would have "inevitably" been found in a subsequent inventory search. See generally Christopher D. Totten, *Arizona v. Gant and Its Aftermath: A Doctrinal "Correction" Without the Anticipated Privacy "Gains,"* 46 CRIM. L. BULL. 1293 (2010).

45. Stoughton, *supra* note 41, at 1745 (arguing that *Gant* was "largely illusory" because the decision did not fundamentally change the reasons why officers conducted pretextual stops).

46. *Id.* at 1761.

47. *Id.* at 1745–49 (citing MATTHEW R. DUROSE ET AL., U.S. DEP'T OF JUST., CONTACTS BETWEEN POLICE AND THE PUBLIC, 2005, at 5 (2007)).

48. Stephen L. Wasby, *Police Training About Criminal Procedure: Infrequent and Inadequate*, 7 POL'Y STUD. J. 461, 464–65 (1978).

particular attention to the exclusionary rule.<sup>49</sup> Approximately one-third of the officers in their sample made Fourth Amendment procedural errors. Even officers who were “extensively trained” made search and seizures mistakes approximately 30 percent of the time.<sup>50</sup> The researchers wondered if Fourth Amendment procedures might be too complicated for officers to apply correctly in real-world situations.<sup>51</sup> They also expressed concern that 15 percent of the officers had reported knowingly violating search and seizure rules that they understood.<sup>52</sup>

Akers and Lanza-Kaduce surveyed 224 officers regarding the constitutionality of their searches.<sup>53</sup> They found that 19 percent of the officers surveyed admitted to conducting searches of “questionable authenticity,” and approximately 4 percent indicated they knew that their searches had blatantly violated Fourth Amendment procedures.<sup>54</sup> Moreover, both subsets of these respondents mentioned their violations occurred rather frequently.<sup>55</sup>

Though these studies were conducted in the late 1980s and early 1990s, more recent research suggests little has changed. Perrin and colleagues surveyed 466 officers and found that they could answer questions about Fourth Amendment procedures correctly only about half of the time.<sup>56</sup>

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49. William C. Heffernan & Richard W. Lovely, *Evaluating the Fourth Amendment Exclusionary Rule: The Problem of Police Compliance with the Law*, 24 U. MICH. J.L. REFORM 311, 331–32 (1991).

50. *Id.* at 345.

51. *Id.* at 357. Indeed, former U.S. Supreme Court Justice Sandra Day O'Connor dissented from the holding in *Tennessee v. Garner* limiting police use of deadly force to apprehend a fleeing suspect because such actions “necessarily [involve] swift action predicated upon the on-the-spot observations of the officer on the beat.” 471 U.S. 1, 26 (1985) (O'Connor, J., dissenting). She reasoned that the “clarity of hindsight cannot provide the standard for judging the reasonableness of police decisions made in uncertain and often dangerous circumstances.” *Id.*

52. Heffernan & Lovely, *supra* note 49, at 348, 355.

53. Ronald L. Akers & Lonan Lanza-Kaduce, *The Exclusionary Rule: Legal Doctrine and Social Research on Constitutional Norms*, 2 SAM HOUSTON ST. U. CRIM. JUST. CENT. RES. BULL. 1, 1–6 (1986).

54. *Id.*

55. The officers answered that these types of violations occur at least once per month. *Id.*

56. L. Timothy Perrin, Harry M. Caldwell, Carol A. Chase, & Ronald W. Fagan, *If It's Broken, Fix It: Moving Beyond the Exclusionary Rule: A New and Extensive Empirical Study of the Exclusionary Rule and a Call for a Civil Administrative Remedy to Partially Replace the Rule*, 83 IOWA L. REV. 669, 728 (1998).

This finding occurred across ranks with minimal variation, suggesting the additional experience and training throughout officers' careers had little impact on their understanding and application of search and seizure law.<sup>57</sup>

Some studies within the police legal knowledge literature focused on the consequences for Fourth Amendment violations (i.e., the use of the exclusionary rule on tainted evidence) as an additional motivating factor to apply the law correctly. Orfield found that officers are more hesitant and, as a result, more careful in conducting searches and seizures when they fear that the evidence would be subject to exclusion from criminal court proceedings.<sup>58</sup> Heffernan and Lovely also concluded that the exclusionary rule is "a weak, yet significant" form of deterrence for police officers who violate the law.<sup>59</sup> But they acknowledged that institutional processes within policing (e.g., internal police discipline) appear to be more effective at deterring illegal police practices than the exclusionary rule alone.<sup>60</sup> Indeed, there is much social science literature to support this notion.<sup>61</sup> Altogether, the few empirical studies on police officers' understanding and application of Fourth Amendment law resonate with what Wasby concluded several decades earlier regarding police recruit training and the application of the law: "training is sadly lacking in criminal procedure content,"<sup>62</sup> and "[t]he spirit and tone of communication about the law, particularly when the law is favorable to defendants' rights, is often negative, with the need for compliance stressed only infrequently."<sup>63</sup>

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57. *Id.* at 719. This study included street-level officers, as well as detectives and sergeants.

58. Myron Orfield, *The Exclusionary Rule and Deterrence: An Empirical Study of Chicago Narcotics Officers*, 54 U. CHI. L. REV. 1016, 1027–29 (1987).

59. See Heffernan & Lovely, *supra* note 49, at 359.

60. *Id.*

61. See generally James J. Fyfe, *Police Use of Deadly Force: Research and Reform*, 5 JUST. Q. 165, 165–205 (1998) (explaining the efficacy of supervision and discipline within departments as a means of controlling police discretion); see also MICHAEL D. WHITE & HENRY F. FRADELLA, STOP AND FRISK: THE USE AND ABUSE OF A CONTROVERSIAL POLICING TACTIC 137–41 (2016) (same); cf. Christopher D. Totten & Sutham Cobkit, *The Knock-and-Announce Rule and Police Searches after Hudson v. Michigan: Can Alternative Deterrents Effectively Replace Exclusion for Rule Violations?*, 15 NEW CRIM. L. REV. 414, 414–57 (2012) (finding that the exclusionary rule, in combination with police institutional processes such as training, education, and discipline, may be useful in deterring police misdeeds related to the knock-and-announce rule).

62. Wasby, *supra* note 48, at 464.

63. *Id.* at 466.

There is only one known study that examined *Gant*'s impact on Fourth Amendment procedures. Totten and Cobkit conducted a study examining police chiefs' perceptions of their departments' VSIARO policies.<sup>64</sup> They also compared the frequency of VSIAROs to other types of searches, such as the automobile exception (which requires probable cause)<sup>65</sup> or inventory searches (which, technically, are administrative searches that do not even require reasonable suspicion).<sup>66</sup> A substantial majority (65%) of the 250 police chiefs surveyed believed "that the officers in their departments did not search vehicles less often" due to *Gant*.<sup>67</sup> Echoing what other scholars had predicted, Totten and Cobkit surmised that officers were circumventing *Gant* by using other search justifications, most notably the less ambiguous inventory search doctrine.<sup>68</sup>

Although Totten and Cobkit took the first steps to investigate police understanding of how *Gant* affects VSIAROs, their study surveyed police chiefs' perceptions, yielding data that may not accurately reflect what is occurring at the line officer level.<sup>69</sup> The present study is the first to attempt filling this gap in the literature.

## II. METHODOLOGY

The researchers surveyed 168 police officers employed in a medium-sized municipal police department in the Southeastern United States that serves a densely populated, primarily suburban county.<sup>70</sup> The principal investigators obtained appropriate permissions from their Institutional Review

64. Totten & Cobkit, *Chiefs' Perceptions*, *supra* note 10, at 50.

65. *Carroll v. United States*, 267 U.S. 132, 153 (1925) (upholding warrantless searches of vehicles for contraband); *Chambers v. Maroney*, 399 U.S. 42, 55 (1970) (extending *Carroll* to evidentiary searches).

66. Totten & Cobkit, *Chiefs' Perceptions*, *supra* note 10, at 61–62.

67. *Id.* at 66.

68. *Id.* at 11.

69. Totten & Cobkit, *Chiefs' Knowledge*, *supra* note 10, at 284; Totten & Cobkit, *Chiefs' Perceptions*, *supra* note 10, at 62 n.41.

70. In exchange for providing access to the police population, the principle investigators agreed to keep this particular police department confidential. According to the U.S. Census Bureau estimates of 2019, this county houses approximately 800,000 residents. For a discussion of the other findings related to this survey data, see Christopher D. Totten, Gang Lee, & Daniel Ozment, *Police Perceptions, Knowledge, and Performance: Traffic Stops and the Use of K-9 Units*, 70 CATH. UNIV. L. REV. 65 (2021).

Board, as well as the specific police department leadership, before administering the survey questionnaire.

### A. Data Collection and Survey Instrument

The researchers distributed a survey during roll call at four precincts, as well as at the training center for this police department. The sampling frame included any line officers—patrol officers and their sergeants—who were present during the distribution of the survey questionnaire. Officers were told that the survey completion was voluntary and responses would be kept anonymous. The investigators distributed 168 surveys; officers returned 137 of them, yielding a high response rate of 82 percent.<sup>71</sup>

The survey asked officers to respond to the legality of a VSIARO under three circumstances: a safety scenario (permissible under *Gant*), an evidentiary preservation scenario (also permissible under *Gant*), and a search scenario allowing the officer to search the entirety of the vehicle without any justification tied to a search incident to arrest (formerly permissible under *Belton*, but impermissible under *Gant*).

### B. Dependent Variables

The dependent variables of interest for this study were based on the construct of police knowledge. This was operationalized through three questions asking officers whether they agreed or disagreed that a particular VSIARO was justified. These questions tapped into the former *Belton* rule and each of the two prongs justifying VSIAROs under *Gant*. Each of these types of measures utilized a four-point Likert scale.<sup>72</sup> These responses were then coded dichotomously, collapsing strongly agree and agree, as well as

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71. Researchers evaluating police response rates to surveys used in 390 articles published between 2008 to 2017 reported that they ranged from 5.2% to 100%, with an average response rate of 64.3%. Justin Nix, Justin T. Pickett, Hyunin Baek, & Geoffrey P. Alpert, *Police Research, Officer Surveys, and Response Rates*, 29 POLICING & SOC. 530, 535 (2017). The average response rate increases to 79.4% when surveys are administered in-person at roll-calls. *Id.* at 536. Thus, by comparison, the response rate in the present study exceeds the median response for the research method the researchers employed.

72. The four-point Likert scale consisted of *strongly agree*, *agree*, *disagree*, and *strongly disagree*. The *neutral* category was not included as an answer choice in the original survey instrument to avoid the midpoint being misused. See, e.g., Seung Youn Chyung, Katherine Roberts, Ieva Swanson, & Andrea Hankinson, *Evidence-Based Survey Design: The Use of a Midpoint on the Likert Scale*, 56 PERFORMANCE & IMPROVEMENT 15 (2017); Robert Johns,

merging strongly disagree and disagree into new single categories (0 = incorrect, 1 = correct). The *Belton search scenario* asked officers to indicate their agreement with this statement: "When a police officer makes a lawful arrest of a vehicle occupant or recent occupant, the officer may then proceed to search the vehicle's passenger compartment and any open or closed containers in that part of the vehicle incident to the arrest." If police officers answered in the affirmative by either strongly agreeing or agreeing that the search was justified without any additional criteria, then this was coded as incorrect since *Belton* is no longer good law.

The *Gant safety scenario* asked about agreement with this statement: "When a police officer makes a lawful arrest of a vehicle occupant or recent occupant, the officer cannot proceed to search the vehicle's passenger compartment incident to the arrest," but may conduct such a search for a safety reason, such as "when the occupant/arrestee has not been secured and is within reaching distance of the passenger compartment." If police officers answered in the affirmative by strongly agreeing or agreeing that the search was justified due to the specific safety element in the scenario, then this was coded as being correct.

Lastly, the *Gant evidence scenario* asked officers about agreement with this statement: "When a police officer makes a lawful arrest of a vehicle occupant or recent occupant, the officer cannot proceed to search the vehicle's passenger incident to the arrest," but may conduct such a search "when the officer has a reasonable belief that evidence relevant to the crime of arrest may be found within the vehicle." Agreement was coded as being correct.

### C. Independent Variables

There are two key independent variables of interest in this study. The first, termed *Gant knowledge*, was measured by asking officers, "Have you heard of or been taught about the case of *Arizona v. Gant*?" This variable was coded dichotomously (0 = no, 1 = yes). The second independent variable, labeled *department training*, also recorded dichotomous answers (0 = no, 1 = yes) to the question, "Has your department provided a training program

or workshop on the legality of the vehicle stops and searches in the past twelve months?”

#### D. Control Variables

As shown in Table I, several demographic variables were also collected from the sample, including age, sex, and race/ethnicity. *Age* was measured as a continuous variable. *Sex* was coded as a dichotomous measure (0 = female, 1 = male). The *race/ethnicity* was originally a categorical variable, but it was collapsed into a dichotomous measure (0 = non-White, 1 = White). We also asked officers about their education, length of time within law enforcement, length of time working with the particular police department, and the number of vehicle stops they perform each week. Although each of these variables was originally measured using ordinal scales, we collapsed them into dichotomous variables suitable for logistic regression analysis as described in Table I.<sup>73</sup>

#### E. Analytic Strategy

To examine police knowledge and training on the correct application of *Gant* search criteria, the analytic strategy involved a two-step sequence. First, we ran descriptive statistics to provide an overview of the data. Second, we ran a series of inferential statistics—including chi-squares, Fisher Exact tests, and logistic regressions—to examine the effects and predictive probability of training and knowledge on *Gant*-related searches.

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73. These variables were collapsed based on conceptual justifications found commonly in the literature. For example, *education* was collapsed to view police who had obtained some form of college degree compared to those who had only a high school diploma or some college experience. See, e.g., Eugene A. Paoline & William Terrill, *Police Education, Experience, and the Use of Force*, 34 CRIM. JUST. & BEHAV. 179, 191–92 (2016) (finding significant differences on use of physical force among college-educated officers compared to officers with only a high school diploma). Alternatively, variables were also collapsed if categories had an unusually low number of observations. For example, *vehicle searches per week*, *length of time within law enforcement*, and *time with current department* variables offered multiple categories for responses, but some had fewer than 2% of the total observations once the data were gathered. To alleviate this issue that can be problematic for certain statistical tests, the smaller categories were collapsed and compared with the largest category. See ALAN C. ACOCK, *A GENTLE INTRODUCTION TO STATA* (5th ed. 2016).

**Table 1. Frequency of Independent Variables**

<i>Variable</i>	<i>Frequencies (%)</i>
<b>Knowledge</b>	
Yes	118 (93%)
No	9 (7%)
<b>Department training</b>	
Yes	98 (77%)
No	29 (23%)
<b>Sex</b>	
Female	10 (8%)
Male	121 (92%)
<b>Race/ethnicity</b>	
Non-White	26 (21%)
White	100 (79%)
<b>Education</b>	
High school or some college	60 (45%)
Associate's degree or higher	74 (55%)
<b>Time in law enforcement</b>	
0 to 5 years	77 (58%)
6 years or more	56 (42%)
<b>Time with current police department</b>	
0 to 3 years	58 (44%)
4 years or more	75 (56%)
<b>Vehicle searches per week</b>	
1 to 5 searches	106 (90%)
6 to 10 searches	12 (10%)

Chi-square and Fisher Exact statistics determine if a significant relationship exists between categorical independent and dependent variables.<sup>74</sup> In

74. Chi-squared test of independence is used to examine if two categorical variables are truly independent of each other. Put simply, this test is used to see if there is a relationship



this study, such a test determines if a relationship exists between the officers' responses to the VSIARO questions and both their self-reported knowledge of *Gant* and whether they had been trained on searches incident to arrests during vehicle stops.

Multivariate logistic regressions are the preferred statistical method when examining an association between categorical independent variables (i.e., whether officers knew about *Gant*; whether officers had recent training about VSIARO) and a dichotomous dependent variable (i.e., whether officers were correct or incorrect in their applications of *Gant*).<sup>75</sup> Accordingly, we utilized this procedure using imputed datasets.<sup>76</sup>

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between two seemingly unrelated variables. See ALAN AGRESTI, STATISTICAL METHODS FOR THE SOCIAL SCIENCES (5th ed. 2018). The Fisher Exact test serves the same purpose, but is more appropriate with sample sizes less than 1,000 (like ours), when any expected frequency is less than one (which is not the case in our data), or when 20% of expected frequencies are less than or equal to 5 (which is the case with some cells in Table 3). See Matthias Döring, *Testing Independence: Chi-Squared vs Fisher's Exact Test*, DATA SCI. BLOG (Oct. 17, 2018), [https://www.datascienceblog.net/post/statistical\\_test/contingency\\_table\\_tests/](https://www.datascienceblog.net/post/statistical_test/contingency_table_tests/). We therefore report both the chi-square and Fisher's Exact statistics as confirmatory of each other.

75. See JASON W. OSBORNE, BEST PRACTICES IN LOGISTIC REGRESSION 3–4 (2015). To maintain the integrity of the statistical analysis, we used multiple imputations using chained equations (MICE) on the independent and control variables to account for missing responses. *Multiple Imputations in Stata*, UCLA STATISTICAL CONSULTING GROUP, [https://stats.idre.ucla.edu/stata/seminars/mi\\_in\\_stata\\_pt1\\_new/](https://stats.idre.ucla.edu/stata/seminars/mi_in_stata_pt1_new/) (last visited Oct. 2021) [hereinafter *Multiple Imputations*]. The *imputation model* included all the variables in Table 1 to avoid omitting predictors from the imputation model that could lead to biased estimates. The *analysis model* included all variables reported in Table 1 except *length of time with current department* and *age* because these variables were used as auxiliary variables. Auxiliary variables are used only in the *imputation model* to increase power and are identified either through prior research or are found to be correlated ( $r > 0.4$ ) with missing variables. Correlations revealed *length of time with current department* was highly correlated with *age* ( $r = 0.821$ ) and *time in law enforcement* ( $r = 0.887$ ). *Age* was highly correlated with *time in law enforcement* ( $r = 0.851$ ).

76. See Paul D. Allison, *Multiple Imputation for Missing Data: A Cautionary Tale*, 28 SOC. METHODS & RES. 301, 301–09 (2000) (noting that multiple imputations have been proven to be an effective method of overcoming missing data).

Two forms of imputation diagnostics were utilized to assess the effectiveness of the MICE. Fraction of missing information (FMI) is the “proportion of the total sampling variance that is due to missing data” and is “estimated based on the percentage missing for a particular variable and how correlated this variable is with other variables in the imputation model.” *Multiple Imputations*, *supra* note 75. The *age* variable obtained the largest FMI value of 25%, which suggests that the data should be imputed at least 25 times. Relative

### III. FINDINGS

#### A. Descriptive Statistics

As Table 1 illustrates, most of the survey respondents were male (92%), White (79%), and had earned some type of college degree (55%).<sup>77</sup> Their ages ranged from 23 to 60, with an average age of 33 and a standard deviation of 8.6 years. The majority of the participants (58%) identified as being employed generally within the law enforcement profession for five years or fewer. Approximately 90 percent reported conducting between one and five searches per week incident to purportedly lawful arrests. Finally, 77 percent of the sample answered that they had received training in the previous twelve months on the legality of vehicle searches.

Table 2 presents the responses of the participants to the three search scenarios. The first scenario, based on the old *Belton* rule, shows that forty respondents (33%) correctly indicated that such a search was impermissible by either strongly disagreeing ( $n = 9$ , 7.38%) or disagreeing ( $n = 31$ , 25.41%) with the statement. This left the overwhelming majority of respondents ( $n = 82$ , 67.21%) answering that the search was justified despite the *Belton* approach no longer being good law. A slight majority of respondents ( $n = 66$ , 53%) displayed proper knowledge of *Gant* by agreeing ( $n = 49$ , 39.52%) or strongly agreeing ( $n = 17$ , 13.71%) that the search cannot lawfully proceed unless the safety of the officers was compromised. Finally, the majority of respondents of the sample ( $n = 78$ , 61%) correctly analyzed the evidence prong of *Gant* by agreeing ( $n = 55$ , 42.97%) or strongly agreeing ( $n = 23$ , 17.97%) that the search would not be legally justified absent the evidence-gathering purpose in the scenario.

#### B. Bivariate Analyses

As Table 3 illustrates, among the 107 police officers who reported having knowledge of the *Gant* ruling, only one-third ( $n = 36$ , 31.30%) correctly answered the *Belton* question by disagreeing or strongly disagreeing that the search would be justified without any additional factors. Conversely,

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efficiency (RE) is “an estimate of the efficiency relative to performing an infinite number of imputations.” *Id.* The estimate for each variable was .99. Altogether, the FMI and RE estimates suggest that the dataset was sufficiently imputed at thirty imputations ( $m = 30$ ) and any further imputations would provide minimal value. *Id.*

77. This includes associate degree, bachelor's degree, and master's degree or higher.

**Table 2. Application of *Gant*<sup>78</sup>**

<i>VSIARO</i> situation/scenario	Frequencies			
<b><i>Belton</i> search (n = 122)</b>	<i>Correct application</i>		<i>Incorrect application</i>	
Officer indicates agreement or disagreement with the legality of searching a vehicle's passenger compartment, as well as any open or closed containers in that part of the vehicle, incident to the arrest of a recent occupant.	40 (33%)		82 (67%)	
	<i>Strongly disagree</i>	<i>Disagree</i>	<i>Agree</i>	<i>Strongly agree</i>
	9 (7.38%)	31 (25.41%)	52 (42.62%)	30 (24.59%)
<b><i>Gant</i> safety search (n = 124)</b>	<i>Correct application</i>		<i>Incorrect application</i>	
Officer indicates agreement or disagreement with the legality of searching a vehicle's passenger compartment incident to the arrest of a recent occupant of that vehicle if the arrestee has not been secured and remains within reaching distance of the passenger compartment.	66 (53%)		58 (47%)	
	<i>Strongly agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Strongly disagree</i>
	17 (13.71%)	49 (39.52%)	45 (36.29%)	13 (10.48%)
<b><i>Gant</i> evidence search (n = 128)</b>	<i>Correct application</i>		<i>Incorrect application</i>	
Officer indicates agreement or disagreement with the legality of searching a vehicle's passenger compartment incident to the arrest of a recent occupant of that vehicle if the officer has a reasonable belief that evidence relevant to the crime of arrest may be found within the vehicle.	78 (61%)		50 (39%)	
	<i>Strongly agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Strongly disagree</i>
	23 (17.97%)	55 (42.97%)	39 (30.47%)	11 (8.59%)

two-thirds of the officers who had been trained about *Gant* (n = 71, 61.74%) nonetheless indicated mistaken agreement with the *Belton* rule. Although this finding is important, neither the chi-square tests nor the Fisher Exact tests produced statistically significant results. In other words, although there is notable disparity between officers' self-reported

78. Minor variations in the totals reported in Tables 2, 3, and 4 are a function of listwise deletion of missing values. For example, the first part of Table 3 examines officer knowledge in *Belton* and the two prongs of *Gant*. The software calculates responses only for those who answered all of the relevant questions, thereby reducing the total number of observations, which ranged from 122 to 128 (Table 2) to 114 to 121 (Tables 3 and 4).

**Table 3. Relationship between Self-Reported Knowledge of Gant and Correct Application of It**

Variable	Knowledge of Gant	No knowledge of Gant	Row totals	Statistics		
	n (%)	n (%)	n (%)	$\chi^2_{(1)}$	Cramer's V	Fisher's Exact
<b>Belton rule</b>				0.05	.021	1.000
Correct application	36 (31.30%)	3 (2.61%)	39 (33.91%)			
Incorrect application	71 (61.74%)	5 (4.35%)	76 (66.09%)			
Column totals	107 (93.04%)	8 (6.96%)	115 (100%)			
<b>Gant safety prong</b>				2.40	.143	.170
Correct application	55 (47.01%)	7 (5.98%)	62 (52.99%)			
Incorrect application	53 (45.30%)	2 (1.71%)	55 (47.01%)			
Column totals	108 (92.31%)	9 (7.69%)	117 (100%)			
<b>Gant evidence prong</b>				0.69	.076	.482
Correct application	68 (56.20%)	6 (4.96%)	74 (61.16%)			
Incorrect application	45 (37.19%)	2 (1.65%)	47 (38.84%)			
Column totals	113 (93.39%)	8 (6.61%)	121 (100%)			

knowledge of *Gant* and their ability to answer the *Belton* question correctly, the differences may be due to chance.

Similarly, the chi-square tests did not reveal statistically significant differences for either the safety or the evidence preservation situation. Roughly half of the officers who had been taught the *Gant* ruling ( $n = 55$ , 47.01%) answered the question correctly regarding the case's safety prong. This is disconcerting because nearly the same percentage of officers ( $n = 53$ , 45.30%) did not correctly apply their training or education about this prong of the *Gant* case. Officers fared slightly better with regard to applying their knowledge of *Gant* correctly ( $n = 68$ , 56.20%) with regard to

**Table 4. Relationship between Departmental Training on Vehicle Searches Incident to Arrests of Recent Occupants and Correct Application of *Gant***

Variable	Training on vehicle stops and searches	No training on vehicle stops and searches	Row totals	Statistics		
	n (%)	n (%)	n (%)	$\chi^2_{(1)}$	Cramer's V	Fisher's Exact
<b>Belton rule</b>				0.59	.072	.492
Correct application	27 (23.68%)	11 (9.65%)	38 (33.33%)			
Incorrect application	59 (51.75%)	17 (14.91%)	76 (66.67%)			
Column totals	86 (75.44%)	28 (24.56%)	114 (100%)			
<b><i>Gant</i> safety prong</b>				0.05	.021	.820
Correct application	46 (38.98%)	15 (12.71%)	61 (51.69%)			
Incorrect application	44 (37.29%)	13 (11.02%)	57 (48.31%)			
Column totals	90 (76.27%)	28 (23.73%)	118 (100%)			
<b><i>Gant</i> evidence prong</b>				4.60*	.197	.050*
Correct application	48 (40.34%)	22 (18.49%)	70 (58.82%)			
Incorrect application	42 (35.29%)	7 (5.88%)	49 (41.18%)			
Column totals	90 (75.63%)	29 (24.37%)	119 (100%)			

\* $p < .05$

the evidence preservation rationale, whereas the remainder could not do so correctly ( $n = 45, 37.19\%$ ). Although this did not reach statistical significance, substantively this could mean those who had been taught *Gant* were nonetheless missing an opportunity to conduct a constitutionally permissible vehicle search under either the safety prong or the evidence prong of the case's holding.

As Table 4 demonstrates, among the roughly three-quarters of police officers who reported their department had offered training on the legality

of stops within the previous twelve months, nearly one-quarter ( $n = 27$ , 23.68%) correctly rejected the application of *Belton*. But more than half ( $n = 59$ , 51.75%) continued to make mistakes about *Belton*'s broad permission to conduct VSIAROs. Similarly, roughly one-third of officers who reported recent training on vehicle searches correctly applied *Gant*'s safety prong ( $n = 46$ , 38.98%) and evidence prong ( $n = 48$ , 40.34%), with a sizeable balance of officers ( $n = 44$ , 37.29% and  $n = 42$ , 35.29%, respectively) still incorrectly applying *Gant*.

Notably, chi-square results yielded significant disparities between department training and the ability to apply *Gant*'s evidence preservation prong correctly ( $\chi^2_{(19, 1)} = 4.60$ ,  $p < .05$ ), although the strength of the association was low ( $V = .197$ ). In other words, recent departmental training was somewhat related to officers' decision-making with regard to conducting vehicle searches incident to arrest in order to look for evidence related to the arrest of the vehicle occupant. This statistically significant, albeit relatively weak difference prompted us to conduct further analysis using logistic regression to examine the relationship between officers' training on vehicle searches and their ability to apply *Gant* correctly.

### C. Multivariate Analyses

Consistent with the chi-square and Fisher Exact analyses, the multivariate logistic regressions presented in Table 5 revealed no significant relationships between recent department training and officer understanding of VSIAROs under *Belton* (Model 1) or under the safety prong of *Gant* (Model 2). However, the logistic regression on *Gant*'s evidence prong (Model 3) produced statistically significant results ( $\beta = -1.039$ ,  $p < .05$ ), but in the wrong direction. The negative beta weight indicates that police officers who had undergone training on vehicle searches within the previous twelve months were *less likely* to correctly apply *Gant*'s evidence prong than officers who did not receive such training within the year prior to completing the survey. In particular, the officers who engaged in the training exhibited a 68 percent decreased odds ( $OR = 0.321$ )<sup>79</sup> of applying *Gant*'s evidence prong correctly.

79. "OR" stands for odds ratio, which "represents the odds that an outcome will occur given a particular exposure, compared to the odds of the outcome occurring in the absence of that exposure." Magdalena Szumilas, *Explaining Odds Ratios*, 19 J. CAN. ACAD. CHILD & ADOLESCENT PSYCHIATRY 227, 227, (2010).

**Table 5. Multivariate Logistic Regression on Departmental Training on Vehicle Searches Incident to Arrests of Recent Occupants and Correct Application of *Gant***

Variable	Model 1 (Belton)			Model 2 ( <i>Gant</i> safety)			Model 3 ( <i>Gant</i> evidence)		
	$\beta$	S.E.	Odds ratios	$\beta$	S.E.	Odds ratios	$\beta$	S.E.	Odds ratios
Department training (0 = No)	-0.270	0.466	0.764	-0.186	0.460	0.830	<b>-1.136*</b>	0.509	0.321
Knowledge (0 = No)	0.078	0.771	1.081	-1.284	0.846	0.277	-0.856	0.893	0.425
Gender (0 = Female)	-0.235	0.785	0.791	-0.657	0.792	0.518	-0.024	0.787	0.977
Race/Ethnicity (0 = Non-White)	0.345	0.561	1.415	0.162	0.509	1.176	0.632	0.519	1.883
Education (0 = High school)	0.321	0.400	1.378	-0.119	0.375	0.887	-0.019	0.388	0.981
Length of Time in Law Enforcement (0 < 6 years)	0.285	0.415	1.330	-0.132	0.393	0.876	-0.635	0.410	0.530

(continued)

Probability means the risk of an event happening divided by the total number of people at risk of having that event. I will use the example in a recent JAMA article. In a deck of 52 cards, there are 13 spades. So, the risk (or probability) of drawing a card randomly from the deck and getting spades is  $13/52 = 0.25 = 25\%$ . The numerator is the number of spades, and the denominator is the total number of cards.

Odds seems less intuitive. It is the ratio of the probability a thing will happen over the probability it won't. In the spades example, the probability of drawing a spade is 0.25. The probability of not drawing a spade is  $1-0.25$ . So the odds is  $0.25/0.75$  or  $1/3$  (or 0.33 or  $1/3$  pronounced 1 to 3 odds).

Clay Smith, *Idiot's Guide to Odds Ratios*, JOURNAL FEED (Dec. 8, 2018), <https://journalfeed.org/article-a-day/2018/idiots-guide-to-odds-ratios>. Put differently, and using the context of the present study, “[o]dds ratios are used to compare the relative odds of the occurrence of the outcome of interest” (e.g., whether an officer correctly applied *Gant's* evidence) “given exposure to the variable of interest” (e.g., departmental training within the prior twelve month period). Szumilas, *supra*, at 227.

TABLE 5. (continued)

Variable	Model 1 (Belton)			Model 2 (Gant safety)			Model 3 (Gant evidence)		
	$\beta$	S.E.	Odds ratios	$\beta$	S.E.	Odds ratios	$\beta$	S.E.	Odds ratios
Searches per week (0 < 6)	0.235	0.679	1.266	-0.184	0.686	0.832	-0.139	0.666	0.870
Constant	-0.949	1.137	0.387	2.047	1.215	7.745	1.876	1.247	6.530
Observations	119			122			123		

\*  $p < .05$ 

## IV. DISCUSSION

### A. Implications of the Results

The overwhelming majority of police officers who participated in this study indicated they had personal knowledge of (93%) or recent training on (77%) *Arizona v. Gant*.<sup>80</sup> Yet, when probed regarding the constitutionality of VSIAROs, many officers' understanding of *Gant*'s implications for police practice left much to be desired. Roughly half of the respondents indicated it was permissible to apply *Belton*'s outdated framework for VSIAROs. This finding is particularly problematic when combined with the fact that the overwhelming majority (90%) of officers conduct vehicle searches between one and five times each week.

Similarly troubling are the results that approximately one-third of the officers indicated inaccurate assessments of how *Gant*'s distinct prongs for officer safety and evidence preservation govern VSIAROs. This potentially means that a sizeable portion of officers are either violating the Fourth Amendment or, alternatively, are unnecessarily compromising officer safety or evidence gathering. These findings are even more troublesome when considered in the context that the *Gant* decision was approaching its ten-year anniversary when the surveys were originally distributed.

The findings pertaining to potentially missed opportunities to search vehicles in a manner sanctioned by *Gant* might highlight the fear of the

80. *Gant*, 556 U.S. 332, 343 (2009).



exclusionary rule. Echoing Orfield's original findings from the late 1980s, officers may be fearful that evidence they retrieve may be subject to exclusion from trial.<sup>81</sup> In other words, the complexities of a case like *Gant* that fails to provide "bright line" guidance to officers may have a chilling effect whereby officers become more hesitant to conduct searches. Confused or unsure officers may simply play it safe by not conducting searches. It is difficult to speculate further given the data constraints and limitations. Future research should examine this more closely either with more advanced research designs or by taking a mixed-methods approach to help contextualize the answers.

There is one other possible explanation for these types of findings: circumvention. As previously explained, scholars warned that *Gant* could produce a spike in inventory searches as police officers might be confused by the *Gant* criterion.<sup>82</sup> Police officers may be defaulting to this type of search to avoid having to engage in the analysis required by *Gant*. If this is true, then this has two negative effects. First, it produces officers who do not adequately understand the law. If officers do not understand the law, then it stands to reason it would be difficult for them to apply the law correctly and impartially, as evidenced by the number of officers erroneously applying the old *Belton* rule in the present study. Second, this creates opportunities for abuse from savvy officers realizing there are no consequences from skipping *Gant* and diving straight into another warrant exception to search the vehicle. For example, officers wanting to search the vehicle yet constitutionally unable to because it does not meet the *Gant* analysis could still search the vehicle through one of the exceptions (e.g., inventory exception; *Carroll* doctrine; etc.). This potential for circumvention highlights a key problem with the *Gant* decision. In order to remedy these issues, the Court will need to decide how *Gant* is intended to interact with these various exceptions, especially inventory searches.<sup>83</sup> Otherwise, *Gant* will remain an ideal that is neither adhered to nor learned, rendering it ineffective.

The results also suggest that something may be amiss in police training. Police officers who received training on vehicle searches within the twelve months prior to completing the survey were *less likely* to conduct a search

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81. Orfield, *supra* note 58, at 1027–29.

82. Smith & Hester, *supra* note 43, at 276–78.

83. Grubman, *supra* note 11, at 162.

correctly under the *Gant's* evidence prong. Put differently, training seems to have backfired in terms of improving officers' ability to recognize and correctly apply *Gant* to search vehicles for evidence related to the crime of arrest. A potential explanation for this finding could be the quality of the training and education officers receive.

Unfortunately, there is a dearth of research on police training protocols and the effects of this training.<sup>84</sup> Indeed, as Skogan and colleagues keenly stated, "We know virtually nothing about the short- or long-term effects associated with police training of any type."<sup>85</sup> Early work in this area by researchers Bradford and Pynes concluded that less than 3 percent of the curricula within the police academy was devoted to decision-making processes and application of the law, whereas more than 90 percent focused on defensive tactics and reactive exercises.<sup>86</sup> More recent data indicates that training in the law continues to constitute a comparatively low proportion of police academy training in comparison to operations, defense tactics, and self-improvement.<sup>87</sup>

More recently, Chappell examined the effectiveness of community policing training in the academy and whether this type of training led to more favorable results compared to traditional methods.<sup>88</sup> Officers who

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84. Wesley G. Skogan, Maarten Van Craen, & Cari Hennessy, *Training Police for Procedural Justice*, II J. EXPERIMENTAL CRIMINOLOGY 319, 319–34 (2015).

85. *Id.* at 320.

86. David Bradford & Joan E. Pynes, *Police Academy Training: Why Hasn't It Kept Up with Practice?*, 2 POLICE Q. 283 (1999).

87. BRIAN A. REAVES, U.D. DEP'T OF JUST., STATE AND LOCAL LAW ENFORCEMENT TRAINING, 2013 (2016), <https://www.bjs.gov/content/pub/pdf/slletar3.pdf>.

[T]he most required training hours were in the area of operations (more than 200 hours per recruit). Major topics covered in operations training included patrol procedures (52 hours), investigations (42 hours), emergency vehicle operations (38 hours), and report writing (25 hours) . . . . An average of 168 hours per recruit were required for training on weapons, defensive tactics, and the use of force. Recruits spent most of this time on firearms (71 hours) and self-defense (60 hours) training. Recruits also spent an average of 21 hours on the use of force, which may have included training on agency policies, de-escalation tactics, and crisis intervention strategies. Recruits were typically also required to take training classes in self-improvement (89 hours per recruit) and legal education (86 hours). On average, more than half of self-improvement training hours were related to health and fitness (49 hours). A majority of the legal training focused on criminal and constitutional law (53 hours) and traffic law (23 hours).

*Id.* at 5.

88. Allison T. Chappell, *Police Academy Training: Comparing Across Curricula*, 31 POLICING: INT'L J. POLICE STRATEGIES & MGMT. 36 (2008).

received community-oriented training did not differ significantly from the comparison group, suggesting that the training had little effect.<sup>89</sup> Chappell concluded that police culture may act as a barrier and hamper the success of new training initiatives.<sup>90</sup> Research by Skogan and colleagues found procedural justice training had successful effects on both the short- and long-term behavior, but there was an important caveat.<sup>91</sup> They explained a fundamental component in the success of the training program rests on organizational support, specifically first-line supervisors who are in direct contact with their line officers.<sup>92</sup>

Of course, these researchers were discussing the effects of procedural justice training on police behavior; however, it stands to reason that this could apply to all types of training programs, especially given the complexity and nuanced nature of the law. Perhaps, police officers are simply going through the motions to ensure they do not receive any type of repercussions from their superiors, by attending these types of workshops without fully investing the time or energy into understanding the law. Conversely, this could be an issue at the departmental level where the leadership responsible for this type of training regime is not investing the necessary resources and pedagogical skills to effectively train their officers in understanding the nuances between *Belton* and *Gant*. Future research will need to investigate this phenomenon more methodically in order to further parse out the details.

## B. Limitations

As is the case with any research, this study presents with some limitations. First, and most notably, this study's independent measures were an important limiting factor. Specifically, the wording to probe the knowledge base of *Gant* among police officers proved to be an issue. Simply asking officers if they have been taught or heard of this particular case proved to be insufficient as it did not adequately ascertain the degree of their knowledge.

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89. However, officers who engaged in the community-oriented policing training were substantially “more empathetic and educated” compared to the officers who were trained under the traditional methods. *Id.* at 51.

90. *Id.* at 52.

91. Skogan et al., *supra* note 84, at 332–33.

92. *Id.* at 333; see also Stephen D. Mastrofski & R. Richard Ritti, *Police Training and the Effects of Organization on Drunk Driving Enforcement*, 13 JUST. Q. 291, 315–17 (1996).

This was an important limitation as the vast majority (93%) admitted to having been taught or heard of the case, which left a small subset of the sample for comparison. Future research can alleviate this concern through the application of a pilot test on the survey questionnaire. This would allow the researchers to obtain feedback on the language of the questionnaire, as well as make sure that the questions are adequately measuring the variables of interest.

Second, although we specifically asked survey respondents about VSIAROs, it is possible that officers misinterpreted the question and answered it by applying *Carroll* and *Acevedo*, even though the question specially targeted searches of vehicles incident to arrests, not searches based on independent probable cause. Nonetheless, officers could conflate probable-cause-based searches of vehicles and containers in them with the *Belton* question in the survey.

Third, this study did not record the ranks of police officers. Although line officers were the targeted sample, this study included some higher ranked officers, such as sergeants. Higher ranked officers may be fundamentally different than their line officer counterparts due to their advanced training and experience.<sup>93</sup> Moreover, line officers are the police patrolling the beat and making the stops. Therefore, future research should focus strictly on a targeted sample consisting of higher ranked officers (e.g., lieutenants, captains, and chiefs).

## CONCLUSION

It is clear that *Gant* has not made the substantive change for which scholars had hoped. Although on the surface *Gant* appears to be a boon to constitutional protections in the vehicle context, it may be less effective in real-world application. A primary culprit of this ineffectiveness is the numerous exceptions that exist in the vehicle search arena, especially inventory searches. Instead of officers relying on *Gant*, they may be circumventing the case's mandate. Clarity is needed in this space. Hopefully, future courts

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93. Totten & Cobkit, *Chiefs' Knowledge*, *supra* note 10, at 283–84 (concluding that police chiefs had a fundamentally good understanding on the *Gant* prongs); *cf.* Totten, Gang, & Ozment, *supra* note 70, at 12, 30 (noting that the survey respondents consisted of officers with ranks spanning from patrol officer to sergeant and that a future study could target higher-ranking officers).

will be able to decipher more clearly how officers applying *Gant* are intended to interact with these other exceptions, thereby ensuring officers have the appropriate tools and abide by constitutional norms. Of course, it may be that officers are doing nothing wrong. Nothing in any U.S. Supreme Court decision directs police officers to consider *Gant* first before considering other alternatives—especially in situations when multiple potential exceptions to the warrant requirement might apply to an event. The fact that police officers might choose one straightforward exception—such as the inventory exception—over others that are more difficult to apply during an arrest situation is not necessarily evidence of misconduct. Rather, it reflects problems with Fourth Amendment jurisprudence. Scholars have repeatedly criticized the U.S. Supreme Court not only for failing to protect people’s privacy while driving, but also for having created a “labyrinth” of confusion for police officers and courts that undercuts effective law enforcement on roads and highways.<sup>94</sup> Even Supreme Court Justices themselves have noted the confusion caused by complexity—perhaps even inconsistency—in the law of search and seizure, generally, and in the vehicle search context in particular. Consider Justice Stevens’ dissent in *Acevedo*:

To the extent there was any “anomaly” in our prior jurisprudence, the Court has “cured” it at the expense of creating a more serious paradox. For surely it is anomalous to prohibit a search of a briefcase while the owner is carrying it exposed on a public street yet to permit a search once the owner has placed the briefcase in the locked trunk of his car. One’s privacy interest in one’s luggage can certainly not be diminished by one’s removing it from a public thoroughfare and placing it—out of sight—in a privately owned vehicle. Nor is the danger that evidence will escape increased if the luggage is in a car rather than on the street. In either location, if the police have probable cause, they are authorized to seize the luggage and to detain it until they obtain judicial approval for a search. Any line demarking an exception to the

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94. 2 W. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT 509 (1978); Yale Kamisar, *The “Automobile Search” Cases: The Court Does Little to Clarify the “Labyrinth” of Judicial Uncertainty*, in 3 THE SUPREME COURT: TRENDS AND DEVELOPMENTS 1980–1981: AN EDITED TRANSCRIPT OF THE THIRD ANNUAL SUPREME COURT REVIEW AND CONSTITUTIONAL LAW SYMPOSIUM 69 (Dorothy Opperman ed., 1982); see also, e.g., Martin R. Gardner, *Searches and Seizures of Automobiles and Their Contents: Fourth Amendment Considerations in a Post-Ross World*, 62 NEB. L. REV. 1 (1983); Barry Latzer, *Searching Cars and Their Contents: United States v. Ross*, 18 CRIM. L. BULL. 381 (1982) (criticizing jurisprudential inconsistencies in the vehicle search context).

warrant requirement will appear blurred at the edges, but the Court has certainly erred if it believes that, by erasing one line and drawing another, it has drawn a clearer boundary.<sup>95</sup>

The complexity and arguably inconsistent logic of Fourth Amendment jurisprudence notwithstanding, the evidence from this study suggests that police may need more effective training to navigate the “labyrinth” of often confusing rules. Police organizations should not only focus on the type of training accessible to their officers, but also concentrate on the quality of that training. Moreover, the quality of training needs to be met with appropriate organizational structures and support in order to be rendered effective.<sup>96</sup>

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95. *California v. Acevedo*, 500 U.S. 565, 598 (1991) (Stevens, J., dissenting).

96. See Mastrofski & Ritti, *supra* note 92, at 308–10; see also Skogan et al., *supra* note 84, at 333.