

COA Opinion: Search of vehicle while occupants were out of reach of the car constituted an illegal search

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On April 13, 2010, the Court of Appeals published its unanimous opinion, authored by Justice Zahra, in *People v. Mungo*, No. 269250. In this case, the Court of Appeals considered the application of the recent United States Supreme Court opinion in *Arizona v. Gant*. In 2008, the Court of Appeals had reversed the trial court order to exclude certain evidence obtained in a vehicle search. While this matter was on appeal to the Michigan Supreme Court, the United States Supreme Court refined the standards for the search of a vehicle incident to arrest in *Gant*. The Michigan Supreme Court remanded the matter to the Court of Appeals for reconsideration in light of *Gant*. In *Gant*, the United States Supreme Court held that a vehicle search incident to arrest is only constitutional if the arrestee is within reaching distance of the passenger compartment at the time of the search, or if it is reasonable to believe that the vehicle contains evidence of the offense that led to the arrest. Here, the arrestee/passenger was detained in a police vehicle at the time of the search, and the driver was outside of reaching distance of the passenger compartment. Thus, the Court of Appeals concluded that the search was illegal under *Gant*. Further, the Court of Appeals found that the “good faith” exception to the exclusionary rule did not apply because at the time of the search, Michigan law on the scope of a search incident to arrest was unsettled, and thus the search could not have been premised on good-faith reliance on case law. Based on these findings, the Court of Appeals affirmed the exclusion of the evidence discovered in the vehicle search.