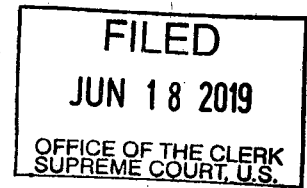


19-5596

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM 2019  
NO.

---



ERIC LATHAM  
Petitioner,

-against-

UNITED STATES  
Respondent,

---

PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT

---

ERIC LATHAM # 13514-040  
ERIC LATHAM , PRO SE  
F.C.I. MCKEAN  
P.O. BOX# 8000  
BRADFORD, PA 16701

### QUESTION PRESENTED

Is whether this Court's ruling in Arizona v. Gant, 556 U.S. 332 (2009), permitted police officers to conduct a "search incident to arrest" for only "probable cause" to arrest the individual for a minor traffic offense, then **bootstrap** the evidence found in the search to the "search incident to arrest" exception.

### PARTIES

The petitioner is Eric Thomas Latham (Eric Latham), and his is a Federal Prisoner at Federal Correctional Institution (F.C.I.) McKean, in Bradford, PA-16701. The first respondent is the Solicitor General for the United States, Department of Justice, Room# 5614, 950 Pennsylvania Ave., N.W., Washington, D.C. 20530-0001. The second respondent is the Sixth Circuit Court of Appeals, 100 E. Fifth Street, Ste# 500, Cincinnati, OH-45202.

## TABLE OF CONTENTS

Question Presented .....	i
Parties .....	i
Table of Authorities .....	ii
Decisions Below .....	1
Jurisdiction .....	1
Constitution Provisions Involved .....	1
Statement of the Case .....	1
Basis for Federal Jurisdiction .....	2
Reasons for Granting the Writ .....	2
A. The decision of the lower Court Conflicts with the decision of this Court. ....	2
B. Importance of the Question Presented. ....	2
Conclusion .....	4
Appendix	
Decision of the United States Court of Appeals .....	A.2
Order of the United States Court of Appeals Denying Rehearing ..	A.3
Order of the United States District Court .....	A.1
Michigan Compiled Laws (M.C.L.) § 257.624a .....	A.5

## TABLE OF AUTHORITIES

### CASES

#### Pages:

Arizona v. Gant, 556 U.S. 332 (2009) .....	i,2
Byars v. United States, 273 U.S. 28 (1927) .....	4
Henry v. United States, 361 U.S. 98 (1959) .....	4
Knowles v. Iowa, 525 U.S. 113 (1998) .....	3
New York v. Belton, 453 U.S. 454 (1981) .....	3
Rawlings v. Kentucky, 448 U.S. 98, 111 (1980) .....	2
Rodriguez v. United States, 135 U.S. 1609 (2015) .....	3
Smith v. Ohio, 494 U.S. 541 (1994) .....	4
Thornton v. United States, 541 U.S. 615 (2004) .....	2
United States v. Di Re, 332 U.S. 581 (1948) .....	4

### **DECISION BELOW:**

The decision of the United States Court of Appeals for the Sixth Circuit is unpublished. A copy is attached as Appendix A to this petition (A.2). A copy of the order of the United States District Court for the Western District of Michigan is attached in Appendix A (A.1).

### **JURISDICTION**

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on February 12, 2019 (A.2). An order denying a petition for a rehearing was entered on April 04, 2019 (A.3), and a copy of that order is attached to this petition. Jurisdiction is conferred by 28 U.S.C. § 1254(1).

### **CONSTITUTIONAL AND STATUTES PROVISIONS INVOLVED**

This case involves the Forth Amendment of the United States Constitution and Article 1 Section 11 of the Michigan Constitution of 1963, which provides:

The Fourth Amendment gives the right to the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall be issued, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Mich. Comp. Laws § 257.624(a), which provides:

Transportation or possession of alcohol liquor in open or uncapped container or upon which seal broken.

### **STATEMENT OF THE CASE**

The petitioner was stopped by the Lansing police on Aug. 11, 2016 for an alleged traffic offense. One of the officers alleged that he observed another traffic offense committed in his presents, and detained the motorist. The officers did not arrest the petitioner for the alleged traffic offenses, and would have let the the petitioner go had nothing been found in the search pre-say the officers. The officer then made an arrest on the driver based on what they had found in the vehicle. The prosecutor delined to issue charges on Aug. 12, 2016. An indictment was issued on Jan. 10, 2017. An suppression motion was filed on Mar. 03 2017, and denied on the grounds of the search incident to arrest, and the Sixth Circuit Court of Appeals affirmed the decision of the District Court.

## BASIS FOR FEDERAL JURISDICTION

This case raise the question of the way the lower courts have applied the "search incident to arrest" exception under *Arizona v. Gant*, 556 U.S. 332 (2009), and if under GANT an officer could conduct a "search incident to arrest" based on **only** probable cause to arrest without violating an individual rights under the Fourth Amendment of the United States Constitution.

## REASONS FOR GRANTING THE WRIT

### A. The decision of the lower courts conflicts with the decision of this Court.

The lower court holding that as long as an officer has "probable cause" to arrest then a search incident to arrest is permitted under *Arizona v. Gant*, 556 U.S. 332 (2009), even you an officer-observed traffic violation. The Circuits cites *Rawlings v. Kentucky*, 448 U.S. 98, 111 (1980)("Where the formal arrest followed quickly on the heels of the challenged search of the person's **Person**, we do not believe it particularly important that the search preceded the arrest rather than vice versa.").

### B. Importance of the Question Presented.

This case presents a fundamental question of the lower courts interpretation of this Court's decision in *Arizona v. Gant*, 556 U.S. 332 (2009). The question presented is of **great importance** because it is about the transforming of the "search-incident-to-arrest" exception into a search incident to "**probable cause**" to arrest exception. In view of the large amounts of delegation, such an exception has neither specifically been established nor well delineated, **cannot** be squared with this Court precedent nor the Fourth Amendment of the United States Constitution.

Circumstance unique to the vehicle context justify a search incident to a lawful arrest when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle. **In many cases, as when a recent occupant is arrest for a traffic violation, there will be no reasonable basis to believe the vehicle contains relevant evidence.** But in others, the offense of arrest will supply a basis for searching the passenger compartment of an arrestee's vehicle and any containers therein. (Stevens, J., joined by Scalia, Souter, Thomas, and Ginsburg, JJ.)

Although a motorist's privacy interest in his vehicle is less substantial than in his home, the former interest is nevertheless important and deserving of constitutional protection. It is particularly significant that New York v. Belton, 453 U.S. 454 (1981) searches authorize police officers to search not just the passenger compartment but every purse, briefcase, or other containers within that space. a rule that gives police the power to conduct such a search whenever an individual is caught committing a traffic offense, where 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. Indeed, the character of that threat implicates the central concern underlying the Fourth Amendment--the concern about giving police unbridled discretion to rummage at will among a person's private effects. (Stevens, J., joined by Scalia, Souter, Thomas, and Ginsburg, JJ.).

In an unanimous opinion, this Court **rejected** the state of Iowa's "search incident to citation" exception to the Fourth Amendment's warrant requirement. This Court in Knowles v. Iowa, 525 U.S. 113 (1998) expressly declined to extend the bright-line rule, permitting police to conduct a full field search incident to a lawful arrest, to a routine traffic stops that result in the issuance of a citation. Noting that the exception for searches incident to arrest is based upon two rationals: (1) the need to disarm the suspect in order to take him into custody; and (2) the need to preserve evidence for a later use at trial. This Court held that neither of these rationales justifies a search in circumstances where a motorist is stopped for speeding and is issued a citation. Concern for safety in such circumstances is relatively limited, and may be addressed by ordering the driver and any passengers out of the vehicle and performing a Terry patdown. As to the discovery and preservation of evidence, once the speeding citation is issued, or reasonably should have been issued ( see. Rodriguez v. United States, 135 U.S. 1609, 191 L. Ed. 2d 492 (2015) all evidence necessary to prosecute that offense has been obtained.

Futhermore, the " bootstrapping " evidence found in a search "incident to arrest"-- based on probable cause for only a minor violation that would have otherwise not result in an arrest, so the fruits of the search incident

to arrest themselves provide the justification for the arrest- is **not** permissible. See., Smith v. Ohio, 494 U.S. 541, 543, 110 S. Ct. 1288, 108 L. Ed. 2d 464 (1994). " Any idea that a search can be justified by what it turns up was long ago **rejected** in our Constitution jurisprudence." A search prosecuted in violation of the Constitution is **not** made lawful by what it brings to light...." Byars v. United States, 273 U.S. 28,29, 71 L. Ed. 2d 520, 522, 47 S. Ct. 248 (1927). See also, United States v. Di Re, 332 U.S. 581, 585, 92 L. Ed. 2d 210, 220, 68 S. Ct. 222 (1948); Henry v. United States, 361 U.S. 98, 103, 4 L. Ed. 2d 134, 139, 80 S. Ct. (1959).

#### CONCLUSION

For the foregoing reasons, certiorari should be granted, or a reverse and remand to the lower Court.

Dated: May 08, 2019

Respectfully Submitted,

  
Eric Latham

CC: File

Solicitor General of The United States  
Sixth Circuit Court of Appeals  
United States Supreme Court



FOOTNOTES

CASES	PAGE
New York v. Belton, 453 U.S. 454, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981).	.3
Search incident to traffic violation. Knowles v. Iowa, 525 U.S. 113, 119 S. Ct. 484, 142 L. Ed 2d 492 (1998)( search of car invalid as search incident to arrest for traffic violation, because officer did not make custodial arrest). See also United States v. Robinson, 414 U.S. 218, 94 S. Ct. 467, 38 L. Ed. 2d 427, 66 Ohio Op. 2d 202 (1973); Gustafson v. Florida, 414 U.S. 260, 94 S. Ct. 488, 38 L. Ed 2d 456, 66 Ohio Op. 2d 275 (1973).	.3
Rodriguez v. United States, ___ U.S. ___, 135 S. Ct. 1609, 191 L. Ed. 2d 492 (2015)(A police stop exceeding the time needed to handle the matter for which the stop was made violated the United States Constitution's shield against unreasonable seizures. A seizure justified <b>only</b> by the a police-observed traffic violation thus became unlawful if prolonged beyond the time reasonably required to complete the mission of issuing a ticket.)(see. Mot. to Suppress trans., RE 46, Page ID# 220, 246.)	.3
Terry v. Ohio, 392 U.S. 1, 19, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)	.3
Scope of arrest search. Thornton v. United States, 541 U.S. 615, 124 S. Ct. 2127, 158 L. Ed. 2d 905, 2004 U.S. LEXIS 3681, at *10 (2004)(in Chimel, "we had described the scope of a search incident to a lawful arrest as the person of the arrestee and the area immediately surrounding him"), citing Chimel v. California, 395 U.S. 752, 763, 89 S. Ct. 2d 685 (1969). See also, <b>Arizona v. Gant</b> , 556 U.S. 332, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009)(officers could <b>not</b> lawfully conduct search in passenger compartment when suspect in custody and offense was driving with suspended license). Petitioner was <b>only</b> being detained for the alleged police-observed traffic violation. (see. Page ID# 220).	.2