



# Roll Call Reporter

June 2016

LEGAL UPDATE FOR MARYLAND LAW ENFORCEMENT OFFICERS

## Vehicle Searches Incident to Arrest

**QUESTION:** When a police officer validly arrests a motorist for driving under the influence, can the officer automatically conclude that open containers or other evidence bearing on the DUI offense may be present in the vehicle's passenger compartment?

**ANSWER:** No. The crime of arrest standing alone does not justify a search of the vehicle's passenger compartment. The officer must have a reasonable belief, meaning some basis in fact (the same as RAS), that the car might contain open containers or other evidence of DUI. The fact basis can be based on the officer's own training and experience, as well as the training and experience of other officers.

**CASE:** *Efrain Taylor v. State of Maryland*  
Court of Appeals of Maryland  
Decided May 23, 2016

## The Traffic Stop, Arrest, and Search of the Vehicle

Officer Chad Mothersell of the Cambridge Police Department stopped Efrain Taylor at 1:00 a.m. after observing him speeding and failing to stop at a stop sign. After the stop, Officer Mothersell approached the passenger side of Taylor's vehicle. As he reached the front passenger window, he detected a minor odor of alcohol coming from Taylor's breath. Taylor was still in the driver's seat. Taylor's speech was slurred and hard to understand and his eyes were bloodshot and glassy. When Officer Mothersell asked for Taylor's registration card, Taylor handed him his insurance card. Taylor said he had been at the Point Break bar in Cambridge.

Officer Mothersell had Taylor exit the car to perform field sobriety tests. Taylor was not able to complete the tests successfully. Taylor was arrested for driving under the influence of alcohol. At that point, a backup officer arrived. Taylor was placed in the backseat of Officer Mothersell's car to be advised of his rights to take or decline a breath test. Meanwhile, the backup officer searched Taylor's car and found cocaine inside the front seat center armrest. The purpose of the search was to locate any alcohol, open containers, or other evidence pertaining to the DUI arrest. Officer Mothersell had

previously made several DUI arrests in which open alcohol containers were left in the car.

### The Charges and Conviction

Taylor was charged with intent to distribute cocaine and driving under the influence of alcohol. He moved to suppress the evidence seized from the car, but his motion was denied. As a repeat drug offender, Taylor was sentenced to a long prison term.

### The Appeal and the Outcome

On appeal, Taylor again argued that, under *Arizona v. Gant*, the search of the passenger compartment of his vehicle was unlawful because there was no independent probable cause for the search. In *Gant*, decided in 2007, the Supreme Court held that police were authorized to search a vehicle incident to arrest only when: (1) the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search, or (2) when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle. Since Taylor was in the police car when his car was searched, only the second circumstance, the “evidence of the crime of arrest” circumstance was present here. In most, if not all, non-alcohol or non-drug related traffic offenses, it is not reasonable to believe that the vehicle contains additional evidence of the offense of arrest. However, for alcohol and/or drug related traffic offenses, it is certainly conceivable that the vehicle may contain more evidence. But that conception is not enough. There must be some basis in fact other than the nature of the crime of arrest that leads the officer to reasonably believe that evidence of the crime will be found in the car.

So, in practice, the “reasonable to believe” standard is the same as “reasonable articulable

suspicion.” Mere speculation or suspicion based on the crime of arrest is not enough. The officer must have some basis in fact to reasonably believe that the car will contain further evidence of the crime. In this case, the articulable fact basis was the officer’s own prior experience in finding open containers in cars subsequent to DUI arrests.

### NOTE:

The necessary “basis in fact” apart from the crime of arrest may be based on not only the officer’s own training and experience, but also on the training and experience of other officers. In cases of arrest for driving under the influence, the “reasonable to believe” (or RAS) standard should be relatively easy to achieve and articulate. Keep in mind, however, that there may be circumstance where it is not reasonable to conclude in relation to a DUI arrest that the passenger compartment might contain open containers or other evidence of the crime of arrest.

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