

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL ANTHONY HENRY, JR.,

Defendant and Appellant.

A125270

(Contra Costa County  
Super. Ct. No. 050812172)

ORDER DENYING PETITION FOR  
REHEARING AND MODIFYING  
OPINION [NO CHANGE IN  
JUDGMENT]

THE COURT:

Appellant’s petition for rehearing is denied. The opinion filed May 25, 2010, is modified by inserting a new footnote number 18 in the last paragraph of part II.A.3. after the citation “(*Gant, supra*, at pp. 1718, 1723, fn. 11.)” as follows:

In his reply brief, defendant contends that the search of his vehicle was not valid even under the state of the law before the *Gant* decision, as the record of the motion to suppress does not support a finding that the search was contemporaneous in time and place with the arrest, nor that he was a “recent occupant” of the vehicle. While the record is sketchy in this regard, the search apparently occurred within some 15 to 20 minutes after Sergeant Malone returned to defendant’s vehicle with the intent of conducting a search (about five or ten minutes after the officers began chasing defendant). Defendant was arrested by other officers in the meantime. This temporal relationship was sufficient to justify the police in believing that defendant was a recent occupant of the vehicle, and to support their reasonable belief that under then-existing case law a search of the car incident to his arrest was permissible. As Justice O’Connor summarized the pre-*Gant* state of the law in her concurring opinion in *Thornton v. United States, supra*, 541 U.S. at page 624, “lower court decisions seem now to treat the ability to search a vehicle incident to the arrest of a recent

occupant as a police entitlement rather than as an exception justified by the twin rationales of *Chimel v. California, supra*, 395 U.S. 752.”

The footnote numbers following number 18 are to be renumbered accordingly.

The above modification does not effect any change in the judgment.