Supplementary Material

Chapter 11: The Contemporary Era—Criminal Justice/Search and Seizure

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

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*Officer Griffith arrested Rodney Gant for driving with a suspended license. After handcuffing Gant and locking him in his squadron car, Griffin conducted a search of Gant's vehicle. He found cocaine. At trial, Gant moved that the evidence be suppressed on the ground that the police lacked probable cause to search his vehicle. That motion was rejected. Gant was found guilty and sentenced to three years in prison. On appeal, the Arizona Supreme Court reversed the trial court decision on the ground that the police search violated the Fourth Amendment, as incorporated by the due process clause of the Fourteenth Amendment. Arizona appealed to the Supreme Court of the United States.*

*Several prominent liberal public interest groups filed amicus briefs urging the court to declare the search unconstitutional. The brief for the National Association of Federal Defenders declared,*

> *The . . . Arizona Supreme Court in this case . . . refused to adopt a rule that authorizes the automatic search of a vehicle incident to an arrest after the arrestee is handcuffed and secured in a police car, and several states have similarly refused to adopt petitioner's rule. Data indicate that the refusal by these states to authorize automatic vehicle searches has not placed law enforcement officers at an increased risk of being assaulted during traffic stops in those jurisdictions. Nor has it hampered law enforcement by requiring unwieldy fact-based assessments as petitioner claims.*

*The United States, twenty-five states, the National Association of Police Organizations, and other law enforcement organizations filed amicus briefs urging the Supreme Court to declare the search constitutional. The brief for the National Association of Police Organizations stated,*

> *The restraints already imposed on investigative initiative are many and substantial. They include constitutional limitations, exclusionary rules, state laws, departmental policies and the potential for civil liability, criminal prosecution and administrative discipline. These constraints take a heavy toll on public safety: according to the 2006 Uniform Crime Reports, average national clearance rates for reported crimes of violence (murder, rape, robbery and aggravated assault) were only 44.3%; property crimes (burglary, theft and motor vehicle theft) were cleared in only 15.8% of reported cases. These are not statistics that cry out for the added investigative inhibition that would surely result from forcing officers to choose surviving over searching.*

*The Supreme Court by a 5–4 vote ruled that the search was unconstitutional. Justice Stevens's majority opinion held that police could search a car after arresting the occupant only if the person arrested could reach the passenger compartment or the arresting officer believed the car contained evidence of the crime for which the occupant was arrested. The justices debated whether this rule was consistent with past precedent and whether past precedent ought to be overruled. What arguments did they make for their positions? Which are most convincing? Justices Scalia and Thomas voted for the more liberal result in this case. What explains their decision? Why did Justice Breyer join the other conservative justices in dissent?*

JUSTICE STEVENS delivered the opinion of the Court.

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Consistent with our precedent, our analysis begins, as it should in every case addressing the reasonableness of a warrantless search, with the basic rule that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." Among the exceptions to the warrant requirement is a search incident to a lawful arrest. The exception derives from interests in officer safety and evidence preservation that are typically implicated in arrest situations.

In (*Chimel v. California* [1969]), we held that a search incident to arrest may only include "the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." That limitation, which continues to define the boundaries of the exception, ensures that the scope of a search incident to arrest is commensurate with its purposes of protecting arresting officers and safeguarding any evidence of the offense of arrest that an arrestee might conceal or destroy.

In (*New York v. Belton* [1981]), we considered *Chimel*'s application to the automobile context. . . .

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[O]ur opinion in (*Belton*) has been widely understood to allow a vehicle search incident to the arrest of a recent occupant even if there is no possibility the arrestee could gain access to the vehicle at the time of the search.

. . .

Under [a] broad reading of *Belton*, a vehicle search would be authorized incident to every arrest of a recent occupant notwithstanding that in most cases the vehicle's passenger compartment will not be within the arrestee's reach at the time of the search. To read *Belton* as authorizing a vehicle search incident to every recent occupant's arrest would thus untether the rule from the justifications underlying the *Chimel* exception—a result clearly incompatible with our statement in Belton that it "in no way alters the fundamental principles established in the *Chimel* case regarding the basic scope of searches incident to lawful custodial arrests." Accordingly, we reject this reading of *Belton* and hold that the *Chimel* rationale authorizes police to search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search.

Although it does not follow from *Chimel*, we also conclude that circumstances 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." . . .

Neither the possibility of access nor the likelihood of discovering offense-related evidence authorized the search in this case. Unlike in *Belton*, which involved a single officer confronted with four unsecured arrestees, the five officers in this case outnumbered the three arrestees, all of whom had been handcuffed and secured in separate patrol cars before the officers searched Gant's car. Under those circumstances, Gant clearly was not within reaching distance of his car at the time of the search. An evidentiary basis for the search was also lacking in this case. Whereas Belton and Thornton were arrested for drug offenses, Gant was arrested for driving with a suspended license—an offense for which police could not expect to find evidence in the passenger compartment of Gant's car. Because police 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, the search in this case was unreasonable.

. . .

Although we have recognized that 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 *Belton* searches authorize police officers to search not just the passenger compartment but every purse, briefcase, or other container within that space. A rule that gives police the power to conduct such a search whenever an individual is caught committing a traffic offense, when 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 officers unbridled discretion to rummage at will among a person's private effects.

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[A] broad reading of *Belton* is also unnecessary to protect law enforcement safety and evidentiary interests. Under our view, *Belton* . . . permit[s] an officer to conduct a vehicle search when an arrestee is within reaching distance of the vehicle or it is reasonable to believe the vehicle contains evidence of the offense of arrest. Other established exceptions to the warrant requirement authorize a vehicle search under additional circumstances when safety or evidentiary concerns demand. For instance, *Michigan v. Long* (1983), permits an officer to search a vehicle's passenger compartment when he has reasonable suspicion that an individual, whether or not the arrestee, is "dangerous" and might access the vehicle to "gain immediate control of weapons."

. . .We have never relied on stare decisis to justify the continuance of an unconstitutional police practice. And we would be particularly loath to uphold an unconstitutional result in a case that is so easily distinguished from the decisions that arguably compel it. The safety and evidentiary interests that supported the search in *Belton* simply are not present in this case. Indeed, it is hard to imagine two cases that are factually more distinct, as *Belton* involved one officer confronted by four unsecured arrestees suspected of committing a drug offense and this case involves several officers confronted with a securely detained arrestee apprehended for driving with a suspended license. . . .

We do not agree with the contention in Justice ALITO's dissent (hereinafter dissent) that consideration of police reliance interests requires a different result. Although it appears that the State's reading of *Belton* has been widely taught in police academies and that law enforcement officers have relied on the rule in conducting vehicle searches during the past 28 years, many of these searches were not justified by the reasons underlying the Chimel exception. Countless individuals guilty of nothing more serious than a traffic violation have had their constitutional right to the security of their private effects violated as a result. The fact that the law enforcement community may view the State's version of the *Belton* rule as an entitlement does not establish the sort of reliance interest that could outweigh the countervailing interest that all individuals share in having their constitutional rights fully protected. . . .

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Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies. The Arizona Supreme Court correctly held that this case involved an unreasonable search. Accordingly, the judgment of the State Supreme Court is affirmed.



JUSTICE SCALIA, concurring.

To determine what is an "unreasonable" search within the meaning of the Fourth Amendment, we look first to the historical practices the Framers sought to preserve; if those provide inadequate guidance, we apply traditional standards of reasonableness. Since the historical scope of officers' authority to search vehicles incident to arrest is uncertain, traditional standards of reasonableness govern. It is abundantly clear that those standards do not justify what I take to be the rule set forth in *New York v. Belton*, . . . that arresting officers may always search an arrestee's vehicle in order to protect themselves from hidden weapons. When an arrest is made in connection with a roadside stop, police virtually always have a less intrusive and more effective means of ensuring their safety—and a means that is virtually always employed: ordering the arrestee away from the vehicle, patting him down in the open, handcuffing him, and placing him in the squad car.

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It must be borne in mind that we are speaking here only of a rule automatically permitting a search when the driver or an occupant is arrested. Where no arrest is made, we have held that officers may search the car if they reasonably believe "the suspect is dangerous and . . . may gain immediate control of weapons." In the no-arrest case, the possibility of access to weapons in the vehicle always

exists, since the driver or passenger will be allowed to return to the vehicle when the interrogation is completed. . . .

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Justice ALITO insists that the Court must demand a good reason for abandoning prior precedent. That is true enough, but it seems to me ample reason that the precedent was badly reasoned and produces erroneous (in this case unconstitutional) results. . . .

JUSTICE BREYER, dissenting.

I agree with Justice ALITO that *New York v. Belton* (1981) is best read as setting forth a bright-line rule that permits a warrantless search of the passenger compartment of an automobile incident to the lawful arrest of an occupant—regardless of the danger the arrested individual in fact poses. I also agree with Justice STEVENS, however, that the rule can produce results divorced from its underlying Fourth Amendment rationale. . . .

The matter, however, is not one of first impression, and that fact makes a substantial difference. The *Belton* rule has been followed . . . by numerous other courts. Principles of stare decisis must apply, and those who wish this Court to change a well-established legal precedent-where, as here, there has been considerable reliance on the legal rule in question-bear a heavy burden. I have not found that burden met. . . .

JUSTICE ALITO, with whom THE CHIEF JUSTICE and JUSTICE KENNEDY join, and with whom JUSTICE BREYER joins in part, dissenting.

. . .

Although the Court refuses to acknowledge that it is overruling *New York v. Belton* (1981) . . ., there can be no doubt that it does so.

The precise holding in *New York v. Belton* could not be clearer. The Court stated unequivocally: "[W]e hold that when 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."

. . .

Because the Court has substantially overruled *Belton* . . ., the Court must explain why its departure from the usual rule of stare decisis is justified. I recognize that stare decisis is not an "inexorable command," and applies less rigidly in constitutional cases. But the Court has said that a constitutional precedent should be followed unless there is a "'special justification'" for its abandonment. Relevant factors identified in prior cases include whether the precedent has engendered reliance, whether there has been an important change in circumstances in the outside world, whether the precedent has proved to be unworkable, whether the precedent has been undermined by later decisions, and whether the decision was badly reasoned. These factors weigh in favor of retaining the rule established in *Belton*.

. . .

[T]here certainly is substantial reliance here. The *Belton* rule has been taught to police officers for more than a quarter century. Many searches—almost certainly including more than a few that figure in cases now on appeal—were conducted in scrupulous reliance on that precedent. It is likely that, on the very day when this opinion is announced, numerous vehicle searches will be conducted in good faith by police officers who were taught the *Belton* rule.

. . .

The *Belton* rule has not proved to be unworkable. On the contrary, the rule was adopted for the express purpose of providing a test that would be relatively easy for police officers and judges to apply. . . .

The first part of the Court's new rule—which permits the search of a vehicle's passenger compartment if it is within an arrestee's reach at the time of the search—reintroduces the same sort of case-by-case, fact-specific decisionmaking that *the Belton* rule was adopted to avoid. . . .

Even more serious problems will also result from the second part of the Court's new rule, which requires officers making roadside arrests to determine whether there is reason to believe that the vehicle contains evidence of the crime of arrest. What this rule permits in a variety of situations is entirely unclear.

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*Chimel* did not say whether "the area from within which [an arrestee] might gain possession of a weapon or destructible evidence" is to be measured at the time of the arrest or at the time of the search, but unless the *Chimel* rule was meant to be a specialty rule, applicable to only a few unusual cases, the Court must have intended for this area to be measured at the time of arrest.

. . . First, in the great majority of cases, an officer making an arrest is able to handcuff the arrestee and remove him to a secure place before conducting a search incident to the arrest. Second, because it is safer for an arresting officer to secure an arrestee before searching, it is likely that this is what arresting officers do in the great majority of cases. Thus, if the area within an arrestee's reach were assessed, not at the time of arrest, but at the time of the search, the *Chimel* rule would rarely come into play.

Respondent in this case has not asked us to overrule *Belton*. Respondent's argument rests entirely on an interpretation of Belton that is plainly incorrect, an interpretation that disregards *Belton*'s explicit delineation of its holding. I would therefore leave any reexamination of our prior precedents for another day, if such a reexamination is to be undertaken at all. In this case, I would simply apply *Belton* and reverse the judgment below.