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The Supreme Court Gives the Green Light to Searches Incident to Traffic Arrests

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CASES NOTED

THE SUPREME COURT GIVES THE GREEN LIGHT TO SEARCHES INCIDENT TO TRAFFIC ARRESTS

Is a full custody search incident to a valid arrest for a traffic violation justifiable where there is no possibility of obtaining further evidence of the crime charged? This question was raised when Willie Robinson was stopped and arrested for driving his motor vehicle without a valid license by an officer who obtained probable cause for the arrest as a result of information gathered during a previous routine spot-check of Robinson.[1] Following standard police procedures,[2] Robinson was searched, and, during the course of this pat-down, the officer felt an object in Robinson's pocket. Although there was no indication that it was a weapon, the officer examined the object and found it to be a crumpled cigarette package containing 14 capsules of white powder which later proved to be heroin. The heroin seized from Robinson was admitted into evidence at his trial which resulted in his conviction for a narcotics offense. The Court of Appeals for the District of Columbia reversed the lower court, holding that where one is arrested for a traffic violation for which there is no evidentiary basis for a search, the scope of the search must be strictly limited to an intrusion reasonably required to discover dangerous weapons, and any search which exceeds those limits will be held to be unreasonable under the fourth amendment.[3] On certiorari, the United States Supreme Court *held*, reversed: A search which is incident to a lawful arrest for a traffic violation is ipso facto reasonable under the fourth amendment and needs no further justification. *United States v. Robinson*, 94 S. Ct. 467 (1973).

The fourth amendment, being the embodiment of the concept that individual liberty depends in large part upon freedom from unreasonable intrusion by those in authority,[4] forbids every search that is unreasonable and, consequently, has been liberally construed to safeguard the citizen's

1. The Court of Appeals assumed, and the respondent conceded, that the officer had probable cause to arrest the respondent and that he effected a full custody arrest. United States v. Robinson, 94 S. Ct. 467, 470 (1973).

2. In a companion case to *Robinson*, the Court held that police regulations which require that an arrestee be taken into custody and be subject to a full-scale body search were of no constitutional significance in determining the validity of a search incident to a lawful traffic violation arrest. Gustafson v. Florida, 94 S. Ct. 488 (1973).

3. United States v. Robinson, 471 F.2d 1082 (D.C. Cir. 1972). The fourth amendment states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, 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.

U.S. CONST. amend. IV.

4. Trupiano v. United States, 334 U.S. 699, 700 (1948).

right of privacy.[5] The constitutional requirement that searches by the state be permitted only upon the issuance of a warrant based upon probable cause was included in the Constitution so that the decision as to when the right of privacy must yield to the right to search would be made by a judicial officer, not by a policeman or government enforcement agent.[6] Recognizing the need for judicial review of police intrusions into the sanctity of citizens' lives, the Court has held that warrantless searches are unreasonable per se under the fourth amendment,[7] subject only to a few specifically established judicial exceptions[8] which "have been jealously and carefully drawn"[9] by the Court. Ultimately, however, the validity of *any* search conducted under the fourth amendment, with or without a warrant, rests upon its reasonableness.[10]

Judicial interpretation of one of these carefully drawn exceptions—the right to search incident to a lawful arrest—has through the years been accorded "far from consistent" treatment.[11] Although the right to search incident to a valid arrest has never been doubted,[12] the scope of the search has been in a constant state of flux.[13] The Supreme Court in *Robinson* reversed the trend of its prior decisions which increasingly limited the permissible scope of warrantless searches.[14] In addition, the holding conflicts

5. United States v. Lefkowitz, 285 U.S. 452, 464 (1932).

6. Johnson v. United States, 333 U.S. 10 (1948).

7. Katz v. United States, 389 U.S. 347, 357 (1967); *accord*, Coolidge v. New Hampshire, 403 U.S. 443, 454-55 (1971).

8. *See, e.g.*, Chimel v. California, 395 U.S. 752 (1969) (only area within arrestee's control may be searched without a warrant); Warden v. Hayden, 387 U.S. 294 (1967) (police in hot pursuit of armed felon allowed to search premises without a warrant); Zap v. United States, 328 U.S. 624 (1946) (consent to search obviates warrant requirement); Agnello v. United States, 269 U.S. 20 (1925) (search incident to valid arrest required no warrant); Carroll v. United States, 267 U.S. 132 (1925) (police, having probable cause that an automobile is being used to commit a felony, were not required to obtain a warrant due to the mobile nature of the vehicle).

9. Jones v. United States, 357 U.S. 493, 499 (1958); *cf.* United States v. Jeffers, 342 U.S. 48, 51 (1951).

10. *See, e.g.*, Schmerber v. California, 384 U.S. 757, 766-72 (1966); United States v. Ventresca, 380 U.S. 102, 105-06 (1965).

11. Chimel v. California, 395 U.S. 752, 755 (1969).

12. Annot., 82 A.L.R. 782 (1933). *See also* Agnello v. United States, 269 U.S. 20 (1925); Weeks v. United States, 232 U.S. 38 (1914).

13. Chimel v. California, 395 U.S. 752 (1969), limiting the scope of a search incident to arrest to the area within the immediate control of the arrestee, overruled United States v. Rabinowitz, 339 U.S. 56 (1950) where evidence obtained by a search of a desk in the arrestee's apartment was held admissible. *Rabinowitz* had in turn overruled Trupiano v. United States, 334 U.S. 699 (1948), which had held that the acquisition of a warrant where practical was a necessary condition for reasonableness. In overruling *Trupiano*, the Court in effect reinstated the rule first enunciated in Marron v. United States, 275 U.S. 192 (1927) and later reiterated in Harris v. United States, 331 U.S. 145 (1947).

14. *See, e.g.*, Chimel v. California, 395 U.S. 752 (1969) (wingspread doctrine); Terry v. Ohio, 392 U.S. 1 (1968) (search for weapons based on less than probable cause to arrest limited to pat-down of outer clothing); Sibron v. New York, 392 U.S. 40 (1968) (evidence seized ruled inadmissible because search exceeded *Terry* standards); Katz v. United States, 389 U.S. 347 (1967) (electronic eavesdropping); Camara v. Municipal Court, 387 U.S. 523 (1967) (limited housing inspections); United States v. Lefkowitz, 285 U.S. 452 (1932) (pretext arrest held unreasonable under the fourth amendment). *But see* Warden v. Hayden,

with the majority of states' interpretation of the reasonableness requirement of the fourth amendment, made binding upon the states through the fourteenth amendment.[15] Prior to the Court's decision in *Robinson*, many states held that a search of a suspect who had violated a traffic ordinance was automatically valid under the fourth and fourteenth amendments;[16] however, a majority of states,[17] encouraged by various commentators,[18] looked at the reasons underlying this warrantless exception and concluded that a citizen's right to be free from unreasonable intrusions would be violated by vesting in a law enforcement officer the authority to conduct a full-custody search of a traffic violator when no other justification was present.[19]

The search of a person incident to a valid arrest is a long-recognized exception to the requirement of a search warrant under the fourth amendment. Nevertheless, a search made under the authority of this exception must meet the reasonableness requirement that is imposed upon all searches conducted by agents of the government.[20] In evaluating the reasonableness of a search, it is necessary

> "first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen," for there is "no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails."[21]

The governmental interest in permitting searches incident to a valid arrest can be determined by an examination of those cases which formulated this exception to the requirement of a search warrant.

The first pronouncement by the Court of the "search incident" excep-

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387 U.S. 294 (1967) and Schmerber v. California, 384 U.S. 757 (1966) where warrantless searches were permitted because of exigent circumstances.

15. Mapp v. Ohio, 367 U.S. 643 (1961).

16. *E.g.*, Worthy v. United States, 409 F.2d 1105 (D.C. Cir. 1968); State v. Gustafson, 258 So. 2d 1 (Fla. 1972), *rev'd*, 94 S. Ct. 488 (1973); State v. Coles, 20 Ohio Misc. 12, 249 N.E.2d 553 (C.P. Montgomery County 1969); Watts v. State, 196 So. 2d 79 (Miss. 1967); Lane v. State, 424 S.W.2d 925 (Tex. Crim. App. 1967).

17. United States v. Robinson, 471 F.2d 1082, 1104-05 n.39 (1972). There are indications that some states believe that Robinson is such an infringement upon fourth amendment rights that they will continue to apply the previous majority position. *See* People v. Kelly, 42 U.S.L.W. 2471 (N.Y. County Crim. Ct. February 13, 1974).

18. *E.g.*, Simeone, *Search and Seizure Incident to Traffic Violations*, 6 ST. LOUIS L.J. 506 (1961); Comment, *Search Incident to Arrest for Minor Traffic Violations*, 11 AMER. CRIM. L. REV. 801 (1973); Note, *Searches of the Person Incident to Lawful Arrest*, 69 COLUM. L. REV. 866 (1969); Note, *Search and Seizure—Search Incident to Arrest for Traffic Violation*, 1959 WIS. L. REV. 347 (1959); Note, *Scope Limitations for Searches Incident to Arrest*, 78 YALE L.J. 433 (1969).

19. For a listing of such special circumstances which would endow a police officer with the right to search one arrested for a traffic violation, see United States v. Robinson, 471 F.2d 1082, 1103-04 n.38 (1972).

20. *See, e.g.*, Schmerber v. California, 384 U.S. 757, 766-72 (1966); United States v. Ventresca, 380 U.S. 102, 105-06 (1965).

21. United States v. Robinson, 471 F.2d 1082, 1099 (1972), *quoting* Camara v. Municipal Court, 387 U.S. 523, 534-35, 536-37 (1967).

tion came in the form of dictum in *Weeks v. United States*[22] which mentioned that an officer has the right to search an arrestee without a warrant *"to discover and seize the fruits or evidences of crime."*[23] Although many decisions subsequently reiterated the validity of the exception, a thorough search of the case law reveals no justification for warrantless searches incident to an arrest other than the need to obtain and preserve evidence of the crime charged,[24] and the need to disarm the arrestee in order to minimize the chance of endangering the life of the arresting officer.[25] As all decisions pronouncing the "search incident" exception were cases involving crimes for which there was evidence capable of being seized,[26] it is readily understandable why the Court gave the police the authority to search the arrestee. Those searches were reasonable because there was probable cause to believe that the arrestee still had such evidence on his person.[27] However, the mere occurrence of an arrest does not automatically vest in the arresting officer authority to effectuate a full-custody search.

> A search or seizure without a warrant as an incident to a lawful arrest has always been considered to be a strictly limited right. It grows out of the inherent necessities of the situation at the time of the arrest. But there must be something more in the way of necessity than merely a lawful arrest. The mere fact that there is a valid arrest does not *ipso facto* legalize a search or seizure without a warrant. . . . Otherwise the exception swallows the general principle, making a search warrant completely unnecessary wherever there is a lawful arrest.[28]

The fact that an arrest did not automatically legalize a consequent search

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22. 232 U.S. 383 (1914).

23. *Id.* at 392 (emphasis added). Justice Frankfurter later noted that the "hint" contained in *Weeks* was, without persuasive justification, "loosely turned into dictum and finally elevated to a decision." United States v. Rabinowitz, 339 U.S. 56, 75 (1950) (dissent).

24. Searches of an arrestee for evidence of crimes other than the one connected with the present arrest have been ruled unconstitutional as exploratory in nature. United States v. Lefkowitz, 285 U.S. 452 (1932); Go-Bart Importing Co. v. United States, 282 U.S. 344 (1931).

The discussion in *Robinson* and in this casenote assumes a valid arrest, for searches incident to an unlawful arrest are ipso facto unreasonable and hence unconstitutional. *See* Rios v. United States, 364 U.S. 253 (1960).

25. *E.g.*, Agnello v. United States, 269 U.S. 20 (1925), where the Court approved of this warrantless exception "in order to find and seize things *connected with the crime* as its fruits or as the means by which it was committed, as well as weapons and other things to effect an escape from custody . . . ." *Id.* at 30 (emphasis added). *See also* Note, *Scope Limitations for Searches Incident to Arrest*, 78 YALE L.J. 433, 434 n.12 (1969).

26. *E.g.*, Harris v. United States, 331 U.S. 145 (1947) (possession of stolen draft cards); Marron v. United States, 275 U.S. 192 (1927) (possession of intoxicating liquor); Agnello v. United States, 269 U.S. 20 (1925) (conspiracy to violate Anti-Narcotic Act by possession of cocaine).

27. *See* Note, *Searches of the Person Incident to Lawful Arrest*, 69 COLUM. L. REV. 866, 871 (1969).

28. Trupiano v. United States, 334 U.S. 699, 708 (1948) (citation omitted). Although *Trupiano* was expressly overturned by United States v. Rabinowitz, 339 U.S. 56 (1950), *Rabinowitz* was in turn overruled by Chimel v. California, 395 U.S. 752 (1969).

logically led to a case-by-case adjudication of the reasonableness of a particular search.[29]

Because individual freedom from unreasonable searches and seizures is to be abridged only when there is a sufficient state interest, a set of principles was formulated which narrowly tied a search incident to arrest to the reasons justifying its conception. A search that starts as a reasonable intrusion can develop into an unreasonable one by virtue of its intolerable intensity and scope,[30] when the arresting officer exceeds the narrow purposes legitimatizing the search. Although the search of an automobile incident to an arrest is justified by the need to seize evidence and weapons, the Court in *Preston v. United States*[31] determined that a search of a car after it was towed to the police station was too remote in time or place to be incident to the arrest because the justifications underlying such a search were no longer present. The Court in examining the reasons behind the general rule allowing searches of automobiles incident to arrest, concluded that these reasons were not present in *Preston* and refused to apply blindly the general rule to a fact pattern that did not support its application.

Similarly, the Court in three recent cases, decided that "[t]he scope of the search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible."[32] The search in *Terry v. Ohio*[33] was sustained because the "pat-down" conducted by the officer did not exceed the scope of the original intrusion, that scope being a protective search for weapons. However, in *Sibron v. New York*,[34] a companion case to *Terry*, it was made crystal clear that a search which was not strictly related to the objective of protection would be ruled unconstitutional. The final case in this trilogy of decisions, *Peters v. New York*,[35] allowed a search incident to an arrest, but only because its scope had been "reasonably limited" by the "need to seize weapons and . . . to prevent the destruction of evidence of the crime."[36] This series of decisions,

29. *See, e.g.*, Go-Bart Importing Co. v. United States, 282 U.S. 344, 357 (1931).

30. *E.g.*, Kremen v. United States, 353 U.S. 346 (1957); Go-Bart Importing Co. v. United States, 282 U.S. 344 (1931); Tinney v. Wilson, 408 F.2d 913 (9th Cir. 1969); United States v. Gonzalez, 319 F. Supp. 563 (D. Conn. 1970).

31. 376 U.S. 364, 367 (1964).

32. Terry v. Ohio, 392 U.S. 1, 19 (1968), *citing* Warden v. Hayden, 387 U.S. 294, 310 (1967) (Fortas, J., concurring). Although the search in *Terry* was not incident to arrest but rather a protective frisk for weapons, the Court in the quoted passage was referring to *all* searches.

33. 392 U.S. 1 (1968).

34. 392 U.S. 40 (1968). In this case, an officer thrust his hand into Sibron's pockets and seized some heroin. The search was held invalid because

> [e]ven assuming *arguendo* that there were adequate grounds to search Sibron for weapons, the nature and scope of the search conducted by [the officer] were so clearly unrelated to that justification as to render the heroin inadmissible.

Id. at 65.

35. 392 U.S. 40 (1968). *Peters* and *Sibron* are companion cases.

36. Sibron v. New York, 392 U.S. 40, 67, *citing* Preston v. United States, 376 U.S. 364, 367 (1964).

therefore, clearly implied that a search incident to arrest would be ruled unconstitutional when it was not strictly related to the underlying purposes which justified its inception.[37]

Robinson was a case of first impression, in that prior to it, all decisions that formulated the "search incident" exception concerned searches that were capable of producing evidence related to the crime for which the suspect was initially arrested.[38] This case presented the novel situation in which an arresting officer had in his possession prior to the search of Robinson the *only* evidence of the crime for which the arrest was made. Robinson was arrested for driving without a valid driver's license and the arresting officer had in his possession before the search occurred the invalid motor vehicle operator's permit. There being no evidentiary basis for a search of Robinson's person,[39] one of the pillars upon which the "search incident" exception was constructed was absent. The *Robinson* Court was, therefore, confronted with two choices. It could either extend the above-mentioned trend of decisions to the novel fact pattern at hand and exclude the evidence as beyond the scope of the search, or it could ignore the reasons for restricting the "search incident" exception to the narrow purposes legitimating the search and apply the general rule to a fact pattern which did not warrant such application. The Court chose the latter course.[40]

The Court, finding that "[v]irtually all of the statements of this Court affirming the existence of an unqualified authority to search incident to a lawful arrest are dicta,"[41] examined the common law roots of the "search incident" exception as well as later American cases which considered the exception. However, as the dissenting opinion points out, the Court conducted "an examination into prior practice which is not only wholly superficial, but totally inaccurate and misleading."[42] Not only

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37. This implication was supported by the later decision of Chimel v. California, 395 U.S. 752 (1969). This case stands for the principle that the scope of a search incident to an arrest is limited to the arrestee's person and the area immediately surrounding him. Since, in *Chimel*,

> [t]here was no constitutional justification, in the absence of a search warrant, for extending the search beyond that area. The scope of the search was . . . 'unreasonable' under the Fourth . . . Amendment . . . .

Id. at 768.

38. *See* Agnello v. United States, 269 U.S. 20 (1925).

39. This point was admitted by the Government in the district court. United States v. Robinson, 471 F.2d 1082, 1094 n.17 (1972).

40. In addition, by holding that " 'the fact of the lawful arrest' always establishes the authority to conduct a full search of the arrestee's person . . ." the court adopted an approach representing "a clear and marked departure from [the Court's] long tradition of case-by-case adjudication of the reasonableness of searches and seizures under the Fourth Amendment." 94 S. Ct. at 478 (dissent). *See* cases cited note 29 *supra*.

41. 94 S. Ct. at 474.

42. *Id.* at 482 (Marshall, J., dissenting). An example of the Court's misleading recount of the history of this exception is its citation of People v. Chiagles, 237 N.Y. 193, 142 N.E. 583 (1923) to support its contention. In fact, *Chiagles* states that evidence is only admissible *"if connected with the crime." Id.* at 197, 142 N.E. at 584 (emphasis added). Since there

is the Court's analysis of the origins of the search incident exception prejudicially selective,[43] but its statement that the validity of a full custody search incident to an arrest "has remained virtually unchallenged until the present case"[44] had no basis in fact.[45]

The Robinson Court also rationalized its holding by giving two reasons why it applied the "broadly stated rule"[46] that there exists "the unqualified authority of [an] arresting authority to search the person of [an] arrestee"[47] to the facts of the case. First, the Court reasoned that the search incident exception "rests quite as much on the need to disarm the suspect in order to take him into custody as it does on the need to preserve evidence on his person for later use at trial."[48] The Court thus believed that the exception was founded on two independent bases and that it will still stand when one of those bases is not present, as in the case at hand. Second, the Court believed that the increased danger to a police officer due to his extended exposure to the suspect after an arrest and while he is being transported to a police station justifies a more thorough search than the protective pat-down for weapons permitted by *Terry*.[49] In addition, the Supreme Court, unlike the lower court, refused to apply the reasoning of *Terry* to the search of Robinson because of the recognition in *Terry* that there is a "distinction in purpose, character, and extent between a search incident to an arrest and a limited search for weapons . . . ."[50] The Court in so holding did not take into account the fact that the *Terry* Court recognized the authority to conduct a relatively extensive exploration of the person incident to an arrest only because, although "justified in part by the acknowledged necessity to protect the arresting officer from assault with a concealed weapon, . . . [it] is also justified on *other* grounds . . . ."[51] Thus, the *Terry* Court permitted a more extensive search of a suspect after arrest than a person

was no evidence connected with the crime charged against Robinson, *Chiagles* must be read to support the dissent's position that evidence not connected with the crime is inadmissible.

43. The Court ignored, for example, Leigh v. Cole, 6 Cox Crim. Cas. 329 (Oxford Circ. 1863) which held that a constable did not have the right to search every person he took into custody. The Court also ignored such early American cases as Haile v. Gardner, 82 Fla. 355, 91 So. 376 (1921) which declared that a search and seizure should not be inappropriate to the requirements for making effective a lawful arrest.

44. 94 S. Ct. at 471.

45. *See, e.g.*, People v. Superior Court, 7 Cal. 3d 186, 496 P.2d 1205, 101 Cal. Rptr. 837 (1972); People v. Watkins, 19 Ill. 2d 11, 166 N.E.2d 433, *cert. denied*, 364 U.S. 833 (1960); People v. Marsh, 20 N.Y.2d 98, 228 N.E.2d 783, 281 N.Y.S.2d 789 (1967); Barnes v. State, 25 Wis. 2d 116, 130 N.W.2d 264 (1964). In addition, other cases cited by the Court justified searches incident to arrest upon the right to seize evidence, a situation totally inapplicable to *Robinson* where there was no evidentiary basis for the search.

46. 94 S. Ct. at 473.

47. *Id.* at 472.

48. *Id.* at 476.

49. 392 U.S. 1 (1968). The Court in *Robinson* implied that police protection by itself provided "an adequate basis for treating all custodial arrests alike for purposes of search justification." 94 S. Ct. at 476.

50. 94 S. Ct. at 473, *citing* Terry v. Ohio, 392 U.S. 1, 25 (1968).

51. Terry v. Ohio, 392 U.S. 1, 25 (1968) (emphasis added).

being subjected to a protective search for weapons, only because of the need to seize evidence in the former type of search.

It would logically follow that if evidence of the crime charged was not capable of being seized incident to an arrest, the *Terry* standards would then apply. This argument was explicitly adopted by the dissenting justices in Robinson. Mr. Justice Marshall, author of the dissenting opinion, noted that the search incident to a valid arrest exception "does not preclude further judicial inquiry into the reasonableness of that search. It is the role of the judiciary, not of police officers, to delimit the scope of exceptions to the warrant requirement."[52] In order to determine the scope of the "search incident" exception, the dissenting justices examined the purposes of the exception as they applied to the particular search in *Robinson*. They found that, as there was no evidentiary basis for a search of Robinson,

> [t]he only rationale for a search in this case . . . is the removal of weapons which the arrestee might use to harm the officer and attempt an escape. This rationale, of course, is identical to the rationale of the search permitted in *Terry*.[53]

The dissenting opinion, therefore, concluded that whenever an officer makes an in-custody arrest, he may conduct a limited frisk of the suspect's outer clothing in order to remove any weapons the suspect might have in his possession.[54] Since the search of the cigarette package exceeded the arresting officer's need to protect himself,[55] it "fell outside the scope of a properly drawn 'search incident to [an] arrest' exception to the Fourth Amendment's warrant requirement."[56]

Upon examination of the result reached in *Robinson*, it becomes clear that what began as an exception to a more general rule has now crystallized into an inflexible rule of law, applying equally to all crimes, including traffic offenses, where little justification can be found for a full-blown search.[57] Although the Court attempted to reconcile its holding with past decisions, the conclusions of the dissenting justices appear to be more logical and consistent with the line of cases decided before *Robinson* which defined the permissible scope of a search incident to arrest. The Court in previous cases, such as *Preston v. United States*,[58]

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52. 94 S. Ct. at 480 (dissenting opinion).

53. *Id.* at 484.

54. *Id.* at 483. The dissent noted that a *Terry* frisk provides sufficient protection of police officers so that a full-blown search is not justified. *Id.* at 486.

55. [E]ven if the crumpled up cigarette package had in fact contained some sort of small weapon, it would have been impossible for respondent [Robinson] to have used it once the package was in the officer's hands.
Id.

56. *Id.* at 488.

57. Note, *Searches of the Person Incident to Lawful Arrest*, 69 COLUM. L. REV. 866 (1969).

58. 376 U.S. 364 (1964).

Terry v. Ohio,[59] and *Chimel v. California*,[60] looked at the reasons underlying the "broadly stated" search incident exception and found that those reasons were not present in the fact patterns before them; consequently, the Court in those cases concluded that the principles underlying the fourth amendment would have been violated if these searches were held to be reasonable.[61] Similar reasoning should have been adopted by the Court in *Robinson* in order to arrive at the conclusion that searches for evidence incident to an arrest are not to be permitted in a situation such as a traffic offense where there is no evidentiary basis for the search.

Although the decision does not expressly utilize a weighing test, it appears that the Court attempted to strike a balance between the government's interest in the safety of its law enforcement officials and the personal integrity and constitutional freedom of the suspect after an arrest. The Court concluded that the large number of police injuries incurred during routine traffic stops necessitates a broader police power to search than that allowed by a *Terry* pat-down.[62] By applying the same balancing test, the dissent once again reached a more equitable solution. The dissent fully appreciated the danger present in all traffic arrests but concluded, after examining all available data,[63] that a *Terry* pat-down would sufficiently protect law enforcement officials in all but the most unusual situation, while simultaneously affording the person under arrest the maximum amount of constitutional protection.[64] In addition, the dissenting Justices believed that the majority rule would increase the likelihood that "a police officer, lacking probable cause to obtain a search warrant, will use a traffic arrest as a pretext to conduct a search"[65] and, therefore concluded that a sufficient state interest did not exist to limit fourth amendment rights which have been such a vital cornerstone of American society.

The *Robinson* Court, as a result of its profound concern for police safety, refused to examine the facts in *Robinson* consistently with the *Preston-Terry-Chimel* trend of cases, in order to reach the desired result. It can be expected that the Court, using *Robinson* as precedent, will in the future further erode the reasonableness requirement of the fourth

59. 392 U.S. 1 (1968).

60. 395 U.S. 752 (1969).

61. *See* notes 29-36 *supra* and accompanying text.

62. 94 S. Ct. at 476.

63. After noting that 108 out of 112 police officers killed while on duty were killed by either firearms or knives, the dissent noted that these weapons are "the very type of weapons which will not go undetected in a properly conducted weapons frisk." 94 S. Ct. at 486 & n.5 (Marshall, J., dissenting).

64. That sufficient protection is afforded to an officer conducting a *Terry* pat-down is evident upon an examination of its definition:

> [T]he officer must feel with sensitive fingers every portion of the prisoner's body. A thorough search must be made of the prisoner's arms and armpits, waistline and back, the groin and area about the testicles, and entire surface of the legs down to the feet.

Terry v. Ohio, 392 U.S. 1, 17 n.13 (1968).

65. 94 S. Ct. at 482.

amendment in order to provide law enforcement officials with even more security at the expense of the citizen's right of privacy.[66] Such a trend "would preclude consideration of the reasonableness of any particular search, and so would take away the protection that the [C]onstitution is designed to provide."[67]

TONY M. EDWARDS

CLASS ACTIONS SCUTTLED IN LAKE CHAMPLAIN

Four owners of property fronting on Lake Champlain in Vermont brought a diversity action against International Paper Company for permitting discharge from its pulp and paper-making plant to pollute the lake, thereby causing damage to lake-front property. Each of the four named plaintiffs alleged individual damages in excess of $10,000. The action was brought as a class action under rule 23(b)(3) of the Federal Rules of Civil Procedure on behalf of approximately 200 property owners and lessees, all of whom had suffered damages. It was not alleged that each unnamed member of the class had suffered individual damages in excess of $10,000, and the trial court was convinced "to a legal certainty" that not every unnamed member of the class had suffered damages in that amount. "[W]ith great reluctance," the United States District Court of Vermont held[1] that *each class member* must independently satisfy the requirement as to jurisdictional amount,[2] thus forcing dismissal of the action as to all members of the class not meeting this requirement. The court further held that in this case the problem of "defining an appropriate class" over which the court had jurisdiction was "insuperable."[3]

66. This theory is buttressed by the recent Supreme Court decision of United States v. Edwards, 94 S. Ct. 1234 (1974) which held reasonable a search of an arrestee's clothing ten hours after his arrest. Mr. Justice Stewart declared that the evidence so obtained could be admissible "only by disregarding established Fourth Amendment principles firmly embodied in many previous decisions of this Court." *Id.* at 1240 (dissent).

67. People v. Watkins, 19 Ill. 2d 11, 18, 166 N.E.2d 433, 437 (1960).

1. Zahn v. International Paper Co., 53 F.R.D. 430 (D. Vt. 1971).

2. "(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between—(1) citizens of different States . . ." 28 U.S.C. § 1332 (1970).

3. Zahn v. International Paper Co., 53 F.R.D. 430, 433 (D. Vt. 1971). Regarding the problem of defining the class, the court said:

> A determination before trial of the landowners actually encompassed within this class would require the unnamed class members to appear and at least plead, and perhaps prove facts substantiating an amount in controversy. This would eliminate any advantage of a class action over joinder; a class action would therefore not be properly mintainable because class treatment would not be "superior to other available methods for the fair and efficient adjudication of the contro-