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CASENOTES

"IMMEDIATE CONTROL" STANDARD REDEFINED FOR PURPOSE OF WARRANTLESS AUTOMOBILE SEARCHES INCIDENT TO ARREST

New York v. Belton[1]

A lone police officer stopped a car for speeding on a New York highway. As he approached the vehicle, the officer smelled the odor of burnt marijuana coming from the car. The automobile contained four men, including the defendant Belton. The officer also saw, on the floor of the car, an envelope stamped "Supergold."[2] He ordered the men out of the car and arrested and searched them. The men then were directed to stand apart from each other, away from the vehicle. The officer searched the interior of the car and five jackets found on the back seat. Cocaine was discovered in the zippered pocket of Belton's jacket.[3]

The trial court denied Belton's motion to suppress the cocaine. Preserving his claim that the seizure of the cocaine had violated the warrant requirement of the fourth amendment, Belton pleaded guilty to a lesser offense.[4] The Appellate Division of the New York Supreme Court upheld the search as incident to a lawful arrest,[5] but the New York Court of Appeals reversed, holding that once the jacket was in the officer's control, searching it could not be justified as incident to arrest.[6] The United States

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1. 101 S. Ct. 2860 (1981).
2. *Id.* at 2862.
3. *Id.*
4. *Id.* The warrant requirement of U.S. CONST. amend. IV provides:
   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.
5. People v. Belton, 68 A.D.2d 198, 416 N.Y.S.2d 922 (1979), *rev'd*, 50 N.Y.2d 447, 407 N.E.2d 420, 429 N.Y.S.2d 574 (1980), *rev'd*, 101 S. Ct. 2860 (1981).
6. People v. Belton, 50 N.Y.2d 447, 407 N.E.2d 420, 429 N.Y.S.2d 574 (1980), *rev'd*, 101 S. Ct. 2860 (1981). The court of appeals relied on Arkansas v.

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Supreme Court, disagreeing with the New York Court of Appeals, held that the search of Belton's jacket was a valid search incident to a lawful custodial arrest, and established a general rule allowing searches of automobile interiors incident to lawful custodial arrests. This is consistent with the approach followed by Missouri courts.[7]

The exception to the warrant requirement of a search contemporaneous with a lawful custodial arrest first was mentioned by the Supreme Court in dictum in *Weeks v. United States*.[8] Ten years later in *Agnello v. United States*,[9] the Court acknowledged the authority of officers to search the place of the arrest and the person of the arrestee.[10] The exception was expanded in *Harris*

Sanders, 442 U.S. 753 (1979), and United States v. Chadwick, 433 U.S. 1 (1977). *Chadwick* dealt with the warrantless search of a locked footlocker, suspected of containing heroin, incident to the arrest of its owner. The search could not be justified as incident to arrest, the Supreme Court said, because it occurred at a place and time removed from the arrest, after the police had "gain[ed] exclusive control of the footlocker and long after respondents were securely in custody." *Id.* at 15. The *Belton* court of appeals compared the zippered jacket pocket to the locked footlocker in *Chadwick*. It said that the defendant retained a privacy interest in the jacket notwithstanding the arrest, just as Chadwick had in the locked footlocker. The jacket was within the exclusive control of the officer once the defendants had been arrested and removed from the car, thus the search of it could not be justified as incident to arrest. 50 N.Y.2d at 452, 407 N.E.2d at 423, 429 N.Y.S.2d at 578.

The Supreme Court in *Belton* dismissed the New York court's reliance on *Chadwick* and *Sanders*, saying neither case involved a valid search incident to arrest. 101 S. Ct. at 2864-65. The Court said *Chadwick*'s search occurred more than an hour after the arrest, while the *Sanders* Court specifically said it was not considering the search incident to arrest exception. *Id.* at 2865.

7. In a case almost directly on point with *Belton*, State v. Venezia, 515 S.W.2d 492 (Mo. En Banc 1974), a warrantless search of the interior of a car incident to arrest was approved. The search of a case found in the car also was approved, although the arrestee was away from the car at the time of the search. The Missouri court relied on some of the same cases and reasoning as followed by the *Belton* Court. For a discussion of Missouri's approach to the search-incident-to-arrest exception, see *Scope of Search Incident to Arrest; Missouri's Application of the Exception*, 42 MO. L. REV. 668 (1977).

8. 232 U.S. 383 (1914). The Court said, "It is not an assertion of the right on the part of the government, always recognized under English and American law, to search the person of the accused when legally arrested, to discover and seize the fruits or evidence of crime." *Id.* at 392 (dictum).

9. 269 U.S. 20 (1925).

10. The Court said:

> The right without a search warrant to search persons lawfully arrested while committing crime and to search the place where the arrest is made 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 escape from custody is not to be doubted . . . .

Id. at 30.

Two years later in Marron v. United States, 275 U.S. 192 (1927), the Court

v. United States[11] to approve the search of a four-room apartment. *United States v. Rabinowitz*[12] set search-incident-to-arrest requirements for the next twenty years, establishing a standard of reasonableness. A case-by-case determination of reasonableness left the door wide open for many searches that previously could not have withstood constitutional challenge.[13]

Chimel v. California[14] slammed the door shut, however, by expressly overruling *Harris* and *Rabinowitz*.[15] The Court rejected an expansive approach to warrantless searches incident to arrest in favor of a narrow rule allowing only searches of the area " 'within . . . [the arrestee's] immediate control'—construing that phrase to mean the area from within which he might

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seemed to base its decision on the warrant exception for the first time: "The officers were authorized to arrest for a crime being committed in their presence and they lawfully arrested Birdsall. They had a right without a warrant contemporaneously to search the place in order to find and seize things used to carry on the criminal enterprise." *Id.* at 198-99.

11. 331 U.S. 145 (1947) (overruled in Chimel v. California, 395 U.S. 752, 768 (1969)). "The opinions of this Court have clearly recognized that the search incident to arrest may, under appropriate circumstances, extend beyond the person of the one arrested to include the premises under his immediate control." 331 U.S. at 151. The *Harris* Court also said that the search could extend beyond the room of the arrest by finding that the arrestee was in exclusive possession of the four-room apartment. *Id.* at 152. These property law concepts of possession and control were used to determine the reasonableness of a search incident to arrest until *Chimel*.

A slight retreat from this expansive view was taken in Trupiano v. United States, 334 U.S. 699 (1948). The warrantless search and seizure of a still was invalidated because ample time and knowledge existed prior to the search to obtain a warrant. That the items seized were near the arrestee "at the moment of his arrest was a fortuitous circumstance which was inadequate to legalize the seizure." *Id.* at 701. *Harris* was distinguished in *Trupiano* on the ground that *Trupiano* encompassed only the "seizure of contraband the existence and precise nature and location of which the law enforcement officers were aware long before making the lawful arrest." 334 U.S. at 708. The Court said *Harris* dealt with the seizure of property that could not have been foreseen to be the subject of a warrant because it was found during the search. *Id.* at 709.

12. 339 U.S. 56 (1950) (overruled in Chimel v. California, 395 U.S. 752, 768 (1969)).

13. *See, e.g.*, United States v. De La Cruz Bellinger, 422 F.2d 723 (9th Cir. 1970), *cert. denied*, 398 U.S. 942 (1970). In *De La Cruz Bellinger*, the defendant was arrested in his house. Officers searched the house without a warrant and found a gun in the hallway dresser in between the room of the arrest and the laundry room. The court upheld the search as "reasonably incident to the defendant's arrest." 422 F.2d at 725. The court used the totality of circumstances test set out in United States v. Rabinowitz, 339 U.S. 56, 66 (1950) (overruled in Chimel v. California, 395 U.S. 752, 768 (1969)), and decided that the gun was found "within the immediate vicinity of the arrestee." 422 F.2d at 725.

14. 395 U.S. 752 (1969).

15. *Id.* at 768.

gain possession of a weapon or destructible evidence."[16] *Chimel* set out the three purposes of the search-incident-to-arrest exception: to discover weapons, to prevent the destruction of evidence, and to prevent escape. To simultaneously effectuate these goals and protect the arrestee's rights, the search was limited to "the area into which an arrestee might reach in order to grab a weapon or evidentiary items."[17]

The "immediate control" standard should have eliminated the need for a complex case-by-case adjudication of the reasonableness of the search. If the search went beyond the area of the arrestee's immediate control, it was automatically unreasonable. It is evident from this standard that the Court intended the area within the immediate control of the arrestee to be measured at the time of the search, not the time of arrest.

Over the next ten years, however, courts showed that *Chimel* was not easy to apply. Courts often reached irreconcilable decisions in cases with similar facts.[18] To ease this difficulty, the *Belton* Court established a general rule to cover the situation. Incident to a valid full custody arrest of an occupant,[19] the interior of an automobile and all containers therein may be searched without a warrant.[20]

The *Belton* Court maintained that the decision was not an alteration of *Chimel*, but merely a definition of its scope in automobile searches.[21] As the following discussion will show, however, the Court's holding may have shifted the focus of such searches from the arrestee's immediate control at the time of the search to his immediate control at the time of the arrest. Such a shift in focus goes beyond merely defining the scope of *Chimel*; it eliminates application of the *Chimel* rationale in cases involving the search of an automobile interior incident to a full custody arrest of an occupant. In holding that the search of the interior of an automobile contemporaneous to the ar-

16. *Id.* at 763. The Court said, however, that there was no justification for searching rooms other than the one in which the arrest occurred or for searching all the drawers or closed areas in that room, unless they could be considered within the arrestee's immediate control. *Id.*

17. *Id.* For further discussion of the development of the search-incident-to-arrest exception, see Comment, Chimel v. California: *A Potential Roadblock to Vehicle Searches*, 17 U.C.L.A. L. REV. 626 (1970); Note, *The Permissible Scope of a Premises Search Incident to Arrest Under* Chimel v. California: *Divergent Definitions of Immediate Control Plague the Lower Courts*, 9 LOY. L.A.L. REV. 350 (1976).

18. *Compare* United States v. Gonzalez-Rodriguez, 513 F.2d 928 (9th Cir. 1975) (search of camper was incident to arrest of driver because within immediate control of arrestee) *with* United States v. Miller, 608 F.2d 1089 (5th Cir. 1979) (search of automobile and portfolio found not incident to arrest because arrestee not near car at time of search).

19. This does not include the trunk of the vehicle. 101 S. Ct. at 2864 n.4.

20. The Court does not differentiate between the driver and passenger in its decision.

21. 101 S. Ct. at 2864 n.3. The Court said that *Belton* left intact the principles underlying *Chimel* and did not extend the scope of search incident to arrest. *Id.*

rest of an occupant is always permissible, the Court created the legal fiction that the interior of a car is always within the immediate control of the arrestee, regardless of the actual circumstances.[22]

The *Belton* Court reached its bright-line rule through a distillation process. The Court examined past search-incident-to-arrest cases that were decided on their particular facts and distilled from the decisions in those cases the generalization that items inside the narrow confines of the passenger compartment of an automobile are generally within the immediate control of the arrestee, as defined in *Chimel*.[23] By using such an approach, the *Belton* Court avoided applying the principles of *Chimel* and established a generalization that makes unnecessary the case-by-case analysis required under *Chimel*. This approach to searches goes even farther than the old "reasonableness" standard of *Rabinowitz*. Under the *Rabinowitz* standard, the arrestee's proximity to the automobile was considered.[24]

If *Belton* truly followed the reasoning of *Chimel*, the Court would have considered the defendant's location.[25] Upholding the search of an area arguably not within the immediate control of the arrestee does not promote the policies underlying *Chimel*. The location of the arrestee is important in determining if the inside of the vehicle is in fact within the arrestee's immediate control. A search hardly can protect an officer, preserve evidence, or prevent escape if the arrestee is not near the area searched. It could be assumed that the Court might have approved the *Belton* search even if the defendant were handcuffed and locked in the patrol car.[26]

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22. In *Belton*, the defendants were standing away from the vehicle during the search. *Id.* at 2862.

23. *Id.* at 2862-65.

24. United States v. Rabinowitz, 339 U.S. 56, 66 (1950) (overruled in Chimel v. California, 395 U.S. 752, 768 (1969)). No specific list of factors to be considered is given by the Court; rather, the "total atmosphere of the case" was used to determine the reasonableness of the search. 339 U.S. at 66.

25. In United States v. Chadwick, 433 U.S. 1 (1977), the location of the arrestees at the time of the search was considered in invalidating the warrantless search. *Id.* at 15. At the time of the footlocker search, the arrestees were safely in custody. It was admitted by authorities that there was no way the arrestees could remove the footlocker from custody by then. The *Chadwick* search was invalidated as being too remote in time and place from the arrest. *Id.*

26. Justice Brennan, in his dissenting opinion, brought many similar questions to the fore. Justice Brennan maintained that the majority's decision abandoned the justifications of *Chimel* by allowing "area searches under circumstances where there is no chance that the arrestee 'might gain possession of a weapon or destructible evidence.' " *Id.* at 2868 (Brennan, J., dissenting) (quoting Chimel v. California, 395 U.S. 752, 763 (1969)). According to Justice Brennan, the crucial question under *Chimel* is whether the arrestee could gain control of an item at the time of the arrest and the search, not whether he *ever* could have gained control of it, as the majority implies.

Although the Court's goal was to establish an easily applied rule for law enforce-

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In disposing of the *Belton* case on the search-incident-to-arrest exception, the Court specifically refused to decide whether the search would have been permissible under the so-called "automobile exception"[27] espoused in *Chambers v. Maroney*[28] and *Carroll v. United States*.[29] In choosing not to consider this exception, the Court may have overlooked the narrowest grounds for validating the *Belton* search. The mobile nature of automobiles sets them apart from other entities amenable to search,[30] and the Court has always been more restrictive in limiting warrantless searches of dwellings than of automobiles.[31] If the Court had applied the automobile exception to *Belton*, the facts relevant to whether the officer had probable cause to search the car's interior would have been considered.[32]

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ment officers, Justice Brennan believed that purpose was not accomplished. He noted problems with the distinction between the interior and the trunk, the actual definition of the interior of the automobile, and the possibility that the decision could be extended to nonautomobile searches. Because *Chimel* no longer applies, Brennan said, police are left with no method of working through these problems themselves. *Id.* at 2869 (Brennan, J., dissenting).

In promoting the continued use of the *Chimel* immediate control standard, Justice Brennan outlined some of the factors to be considered by police in determining the scope of the arrestee's immediate control: "[T]he relative number of police officers and arrestees, the manner of restraint placed on the arrestee, and the ability of the arrestee to gain access to a particular area or container." *Id.* at 2870 (Brennan, J., dissenting) (footnote omitted).

Prior cases, especially *Chadwick*, indicate that the Court did not intend this expansion of the search-incident-to-arrest exception to extend to searches remote in time from the arrest. *See* United States v. Chadwick, 433 U.S. 1, 15 (1977) (not a valid search incident to arrest when search conducted one hour after arrest). *See also* Preston v. United States, 376 U.S. 364 (1964).

27. 101 S. Ct. at 2865 n.6.

28. 399 U.S. 42 (1970).

29. 267 U.S. 132 (1925).

30. The Court first considered this distinction in Carroll v. United States, 267 U.S. 132, 153 (1925). In Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216 (1968), the Court explicitly cited the mobile nature of the automobile to justify warrantless search on arrest, solely on probable cause. *Id.* at 221. *See also* note 31 *infra*.

31. Support for a distinction between automobiles and dwellings first was given in Carroll v. United States, 267 U.S. 132 (1925):

> [T]he guaranty of freedom from unreasonable searches and seizures by the Fourth amendment has been construed, practically since the beginning of the Government, as recognizing a necessary difference between a search of a store, dwelling house and other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile . . . where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought . . . .

Id. at 153-54. *See also* Chambers v. Maroney, 399 U.S. 42 (1970); Brinegar v. United States, 338 U.S. 160 (1949).

32. Such relevant facts would include the odor of marijuana and the envelope

The *Belton* Court took a disturbing step in allowing a search of all containers found in the passenger compartment of a vehicle. The Court stated that if the passenger compartment is "within reach of the arrestee, so also will containers in it be within his reach."[33] Such containers include closed or open glove compartments and consoles, as well as "luggage, boxes, bags, clothing and the like."[34] The opinion is silent, however, on the approach to be taken to such searches if the containers are locked. How the Court will deal with the search of, for example, a locked suitcase found on the back of a car is unclear.[35]

In reaching its decision, the Court relied on *United States v. Robinson*,[36] which upheld the warrantless search of the person of an arrestee incident to a lawful arrest. *Robinson* held that a custodial arrest based on probable cause is a reasonable intrusion under the fourth amendment and that no further justification is needed for the search of the person incident to that arrest.[37] The Court said that because the officer found a cigarette package on Robinson's person during a lawful search, he was entitled to inspect it and "seize . . . [heroin capsules found therein] as 'fruits, instrumentalities, or contraband' probative of criminal conduct."[38] The *Belton* Court adopted

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in plain view on the car floor, as well as the car's location on a busy highway where preserving it until a warrant could be obtained might have been difficult.

33. 101 S. Ct. at 2864.

34. *Id.* at 2864 n.4.

35. It may be that the Court will draw the line at locked personal luggage found in an automobile because of the expectation of privacy attendant to such items. Because the Court has declined to approve a warrantless search of locked personal luggage under the automobile exception, *see* note 33 *supra*, it is unlikely to approve such a search when the search-incident-to-arrest exception is used. *See* United States v. Chadwick, 433 U.S. 1, 9 n.4 (1977). *Chadwick* upheld the defendant's privacy interest in a locked footlocker found in a car trunk and searched without a warrant. The Court rejected the contention that the factors which result in the reduced expectation of privacy in automobiles, such as mobility, also apply to luggage. *Id.* at 13. Because luggage is intended to be a repository of personal belongings, it is afforded a higher privacy level than an automobile. Once officers have reduced the property to their "exclusive control," so that there is no danger that the arrestee could gain possession of it, "a search of that property is no longer incident to arrest," and requires a warrant. *Id.* at 15.

36. 414 U.S. 218 (1973).

37. A car driven by Robinson was stopped by a police officer. Robinson was arrested for operating the car after revocation of his license. When his person was searched, a crumpled cigarette pack was found in his pocket. *Id.* at 223. The officer took out the pack and looked inside it; he found heroin capsules. The search was upheld for the reasons expressed in *Chimel*: protection of the officer, preservation of evidence, and prevention of escape. *Id.* at 226.

38. 414 U.S. at 236 (citations omitted). The Court said that a case-by-case determination of the probability that an arrestee has weapons or evidence on his person is not indicated from case history or legal scholarship. *Id.* at 235. The existence of a lawful arrest grants the authority to search, the Court said, and it is

Robinson's rationale without regard to the factual differences in the cases. It is much easier for an arrestee to reach evidence or a weapon in the pocket of a jacket that he is wearing than in the pocket of a jacket on the back seat of a car. It is clear that the person of the arrestee and things on that person are within his immediate control, but a legal fiction is necessary to reach the same conclusion with respect to automobiles and their contents.[39]

The *Belton* Court not only used *Robinson* to validate searches of containers in automobiles, but also to establish "a single familiar standard essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved."[40] The Court noted with admiration that *Robinson* established a "straightforward rule, easily applied, and predictably enforced."[41] Because of the inconsistency in application of the immediate control standard, the Court decided that such a straightforward rule would be beneficially applied to automobile searches incident to arrest.[42] Once again, however, the Court failed to consider the differences inherent in the search of a person and a search of his automobile.

While making it easier on the police officer, applying a general rule to automobile searches incident to arrest will increase the number of valid warrantless searches. Because *Belton* eliminates the case-by-case analysis prescribed by *Chimel*, the facts of a particular case will not be explored to determine whether it was necessary to search the contents of the passenger area of the automobile without a warrant. Consequently, the *Belton* rule will intrude on the protection afforded an individual's privacy interest in closed containers, even when such an intrusion is not justifiable under the principles of *Chimel*. Although *Belton* stated otherwise, the Court has sacrificed the principles underlying *Chimel* to create an easily applied rule.

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up to the ad hoc judgment of the policemen to decide how and where to search an arrestee. *Id.*

39. The Court, however, ignores the following statement made in United States v. Chadwick, 433 U.S. 1 (1977): "Unlike searches of the person, . . . searches of possessions within an arrestee's immediate control cannot be justified by any reduced expectations of privacy caused by the arrest. Respondents' privacy interest in the contents of the footlocker was not eliminated simply because they were under arrest." *Id.* at 16 n.10. This could mean that the Court is unwarranted in its reliance on *Robinson*'s rationale to support searches of containers found within automobiles as justified by the invasion of privacy inherent in the arrest.

40. 101 S. Ct. at 2863 (quoting Dunaway v. New York, 442 U.S. 200, 213-14 (1979)).

41. 101 S. Ct. at 2863.

42. In his dissent in *Chadwick*, Justice Blackmun supported such a standardized rule in connection with searches incident to valid arrests in public places. *See* United States v. Chadwick, 433 U.S. 1, 21-22 (1977) (Blackmun, J., dissenting). *See also* LaFave, *"Case-by-Case Adjudication" Versus "Standardized Procedures": The Robinson Dilemma*, 1974 SUP. CT. REV. 127.