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Expanding the Scope of a Search Incident to an Arrest: Efficiency at the Expense of Fourth Amendment Rights - New York v. Belton

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NOTES

EXPANDING THE SCOPE OF A SEARCH INCIDENT TO AN ARREST: EFFICIENCY AT THE EXPENSE OF FOURTH AMENDMENT RIGHTS — *NEW YORK V. BELTON*

Unreasonable searches and seizures are expressly prohibited by the fourth amendment of the United States Constitution.[1] To enforce this constitutional mandate of reasonableness, the fourth amendment requires that police, upon a showing of probable cause,[2] obtain a search warrant from a neutral magistrate before conducting a search.[3] Despite this proscription against warrantless searches, the United States Supreme Court has recognized several exceptions[4]

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1. The fourth amendment 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.

U.S. CONST. amend. IV.

For a complete discussion of the fourth amendment right to search, see Amsterdam, *Perspectives on the Fourth Amendment*, 58 MINN. L. REV. 349 (1974). The fourth amendment was made applicable to the states through the fourteenth amendment in Wolf v. Colorado, 338 U.S. 25 (1949).

2. Several Supreme Court opinions have articulated the notion of probable cause. *See, e.g.*, Michigan v. DeFillippo, 443 U.S. 31, 37 (1979) (probable cause exists when the facts and circumstances known to the arresting officer would cause a prudent man to believe the suspect had committed or was about to commit a crime); Wong Sun v. United States, 371 U.S. 471, 479 (1963) (probable cause is evidence that would instill a belief in a reasonably cautious man that a crime had been committed); Brinegar v. United States, 338 U.S. 160, 175 (1949) (probable cause exists when there is less evidence than would justify a conviction, but more than would raise mere suspicion). For a good discussion of the probable cause requirement, see W. LAFAVE, SEARCH AND SEIZURE §§ 3.1, 3.2 (1978 & Supp. 1982) [hereinafter cited as LAFAVE]; W. RINGEL, SEARCHES & SEIZURES ARRESTS AND CONFESSIONS §§ 4.1-4.3 (2d ed. 1981) [hereinafter cited as RINGEL].

3. *See* United States v. Harris, 403 U.S. 573, 579-80 (1971) (police must present sufficient evidence to magistrate); Terry v. Ohio, 392 U.S. 1, 20 (1968) (police must obtain a search warrant through the judicial procedure whenever practicable); Katz v. United States, 389 U.S. 347, 356-57 (1967) (searches conducted by police outside the judicial procedure are per se unreasonable subject only to several exceptions); United States v. Jeffers, 342 U.S. 48, 51 (1951) (fourth amendment requires police to adhere to the judicial processes); Johnson v. United States, 333 U.S. 10 (1948) (police must present evidence to a neutral and detached magistrate); United States v. Lefkowitz, 285 U.S. 452 (1932) (a magistrate's decisions to search is preferred over the quick, ad hoc judgment of a police officer).

4. *See, e.g.*, South Dakota v. Opperman, 428 U.S. 364 (1976) (inventory search); Almeida-Sanchez v. United States, 413 U.S. 266 (1973) (border search); Schneckloth v. Bustamonte, 412 U.S. 218 (1973) (consent search); Coolidge v. New Hampshire, 403 U.S. 443 (1971) (plain view doctrine); Terry v. Ohio, 392 U.S. 1 (1968) (stop and frisk); Warden v.

that obviate the warrant requirement.[5] One such exception is a search performed incident to a lawful custodial arrest.[6]

The underlying purposes of the search-incident exception[7] are the protection of law enforcement officers and the prevention of the destruction of evidence.[8] Consequently, a limited, warrantless search is permitted pursuant to a lawful custodial arrest to ensure the safety of police and the preservation of evidence. In an attempt to establish guidelines for police officers conducting a warrantless search incident to an arrest, the Supreme Court in *Chimel v. California*[9] declared that a search incident to an arrest must be limited to the area "within the immediate control" of the arrestee.[10]

Although the standard adopted in *Chimel* appeared straightforward and

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Hayden, 387 U.S. 294 (1967) (hot pursuit); Carroll v. United States, 267 U.S. 132 (1925) (automobile exception).

Although the Court has recognized exceptions to the warrant requirement, it insists that every exception must be narrowly construed. *See* Mincey v. Arizona, 437 U.S. 385, 393-94 (1978) (warrant requirement may be obviated only when the exigencies of the situation compel that a warrantless search would be reasonable); Coolidge v. New Hamshire, 403 U.S. 443, 454-55 (1971) (warrant requirement is the general rule subject only to a few specifically established and well delineated exceptions); Jones v. United States, 357 U.S. 493, 499 (1958) (exceptions to warrant requirement must be carefully and "jealously" drawn).

5. *See* Coolidge v. New Hampshire, 403 U.S. 443, 455 (1971) (exigencies of the situation must be proved by those seeking an exception to the warrant requirement); McDonald v. United States, 335 U.S. 451, 456 (1948) (exigent circumstances may make a warrantless search imperative).

6. *See, e.g.*, United States v. Edwards, 415 U.S. 800 (1974) (search of arrestee's clothing following incarceration valid); United States v. Robinson, 414 U.S. 218 (1973) (search of package located on arrestee pursuant to arrest sustained); Gustafson v. Florida, 414 U.S. 260 (1973) (search of cigarette box found on arrestee's person subsequent to arrest upheld).

The Court has concluded that in certain instances the search-incident exception will not sustain a warrantless search. *See, e.g.*, Chimel v. California, 395 U.S. 752 (1969) (search of house subsequent to arrest of individual inside the house); Sibron v. New York, 392 U.S. 40 (1968) (search of defendant's pants pockets when no valid arrest occurred); Preston v. United States, 376 U.S. 364 (1964) (search of arrestee's automobile several hours after arrestee taken into custody). *See generally* C. WHITEBREAD, CRIMINAL PROCEDURE §§ 6.01-.06 (1980) [hereinafter cited as WHITEBREAD].

7. The search-incident exception and the phrase "search incident to an arrest" will be used interchangeably throughout this Note.

8. In Preston v. United States, 376 U.S. 364 (1964), the Court stated:

> The rule allowing contemporaneous searches is justified, for example, by the need to seize weapons and other things which might be used to assault an officer or effect an escape, as well as by the need to prevent the destruction of evidence of the crime—things which might easily happen where the weapon or evidence is on the accused's person or under his immediate control. But these justifications are absent where a search is remote in time or place from the arrest.

Id. at 367.

9. 395 U.S. 752 (1969).

10. *Id.* at 763. Prior to *Chimel*, the Court had not set forth any specific geographic limitations on a search performed incident to an arrest. The only requirement was that the search be reasonable. *See, e.g.*, United States v. Rabinowitz, 339 U.S. 56 (1950) (search of defendant's place of business following his arrest therein reasonable); Trupiano v. United States, 334 U.S. 699 (1948) (search of farm building following defendant's arrest when police had time to ob-

easily understandable, courts applying the *Chimel* standard to automobile searches involving similar factual patterns produced inconsistent results.[11] In an effort to rectify this inconsistency, the Court, in *New York v. Belton*,[12] delineated a "bright line" rule establishing the permissible scope of a warrantless automobile search incident to an arrest.[13] The *Belton* Court held that incident to a lawful custodial arrest,[14] the interior of the automobile and any container therein may be searched without a warrant.[15]

To understand the ramifications of the *Belton* decision it is necessary to examine the development of the search incident to an arrest exception. Although *Belton* appears to be a logical expansion of this exception, a closer analysis of the decision reveals that the Court's holding significantly undermines the fundamental principles of the search-incident exception. Moreover, the *Belton* decision frustrates the reasonableness mandate of the fourth amendment and permits an intolerable and unjustifiable intrusion of an individual's privacy interest. As a result, *Belton* may cause more confusion than it eliminates and may subject an automobile and containers located within it to unrestricted warrantless searches.[16] Finally, the ruling in *Belton* effectively erodes recent limitations imposed by the Court on war-

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tain a search warrant unreasonable); Harris v. United States, 331 U.S. 145 (1947) (search of entire apartment for five hours pursuant to arrest of defendant reasonable).

For a further discussion of the characteristics of the search-incident exception prior to *Chimel*, see *infra* notes 18-20 and accompanying text.

11. *Compare* United States v. Sanders, 631 F.2d 1309 (8th Cir. 1980) (search of package on automobile seat valid search incident to arrest), *cert. denied*, 449 U.S. 1127 (1981) *and* United States v. Dixon, 558 F.2d 919 (9th Cir. 1977) (search of brown paper bag on floorboard valid under search-incident exception), *cert. denied*, 434 U.S. 1063 (1978) *and* United States v. Frick, 490 F.2d 666 (5th Cir. 1973) (search of briefcase seized from automobile valid as search incident to defendant's arrest), *cert. denied*, 419 U.S. 831 (1974) *with* United States v. Benson, 631 F.2d 1336 (8th Cir. 1980) (search of leather totebag confiscated from automobile invalid as search incident to arrest) *and* United States v. Rigales, 630 F.2d 364 (5th Cir. 1980) (search of leather case containing a small pistol invalid as search incident to arrest).

12. _____ U.S. _____, 101 S. Ct. 2860 (1981).

13. *Id.* at 2863-64. The Court stated that in order for a person to know the limits of his constitutional protection, and police to know the scope of their authority to conduct a warrantless search, a "straighforward" standard was required that could be "predictably" enforced. *Id.* at 2863. Justice Brennan stated that the majority's desire to create a standard approach for determining the validity of a search incident to an arrest resulted in "an arbitrary 'bright line' rule." *Id.* at 2866 (Brennan, J., dissenting).

14. A custodial arrest is defined as a confinement or detention by police during which a person is entitled to certain warnings regarding his constitutional rights. *See* Miranda v. Arizona, 384 U.S. 436, 444 (1966). One author defines custodial arrest as an arrest in which the police may take physical custody of the suspect. The decision to take custody is left to the discretion of the police. However, in order to conduct a warrantless search under the search-incident exception the police must have the intent to transport the person to the police station following the search. 2 LAFAVE, *supra* note 2, §§ 5.1(h), 5.2(h).

15. 101 S. Ct. at 2864. Included in the right to search a container located in an automobile is the right to search a container located within another container. For example, a shaving kit located within a suitcase. The *Belton* Court authorizes this search regardless of whether the container searched was open or closed. *Id.*

16. *See infra* notes 110-32 and accompanying text.

rantless container searches performed under the auspices of the "automobile exception."[17]

HISTORY OF THE SEARCH INCIDENT TO ARREST

Originally, the authority to perform a search incident to a lawful arrest permitted police to conduct a warrantless search of the arrestee and the entire premises where the arrest transpired.[18] The need to locate and seize evidence of the crime provoking the arrest justified this exception to the general search warrant requirement.[19] The only limitation placed on the permissible scope of such a warrantless search was the fourth amendment re-

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17. Two recent cases severely restricted the power of police to search containers located within the automobile when the validity of the search was predicated on the automobile exception. *See* Robbins v. California, _____ U.S. _____, 101 S. Ct. 2841 (1981) (closed container in an automobile cannot be searched under the automobile exception unless container's contents are in plain view or container outwardly displays what is located therein); Arkansas v. Sanders, 442 U.S. 753 (1979) (closed piece of luggage located in automobile generally cannot be searched absent a warrant). *See also* United States v. Chadwick, 433 U.S. 1 (1977). In *Chadwick*, the government argued that the search of a locked footlocker located in an automobile could be sustained under the automobile exception or the search-incident exception. The Court rejected both arguments. In invalidating the argument that the search was justified under the automobile exception, the Court stated that a person's expectation of privacy in a closed piece of luggage required fourth amendment protection. The fact that the luggage was placed in an automobile did not lessen that need for constitutional protection. *Id.* at 12-13. *See generally* 2 LAFAVE, *supra* note 2, § 7.2(e); RINGEL, *supra* note 2, § 10.3; Note, *Warrantless Container Searches Under the Automobile and Search Incident Exceptions*, 9 FORDHAM URBAN L.J. 185 (1980).

18. In Weeks v. United States, 232 U.S. 383 (1914), the Court recognized the right to search a person incident to arrest, but did so only in dictum. *Id.* at 392. Eleven years after this initial recognition, the Court, in Agnello v. United States, 269 U.S. 20 (1925), provided dictum approving the search of a person and the location where the arrest was effected. *Id.* at 30. Later, in Marron v. United States, 275 U.S. 192 (1927), the dictum of *Agnello* appeared to be the foundation of the Court's decision. The *Marron* Court held that police, subsequent to a lawful arrest, could search the premises where the arrest occurred "in order to find and seize the things used to carry on the criminal enterprise." *Id.* at 199.

The Court provides a thorough discussion of the historical development of the search-incident exception in Chimel v. California, 395 U.S. 752, 755-65 (1969).

19. *See, e.g.*, United States v. Rabinowitz, 339 U.S. 56, 61 (1950); Harris v. United States, 331 U.S. 145, 151 (1947). The Court in both *Harris* and *Rabinowitz* upheld convictions based on evidence obtained in a warrantless search of the entire premises where the arrest occurred. The *Rabinowitz* Court stated that the search-incident exception gave police "the right to search the place where the arrest is made in order to find and seize things connected with the crime. . . ." 339 U.S. at 61.

Application of the *Harris* and *Rabinowitz* decisions by lower courts conferred an unbridled discretion upon the arresting officer in determining the area in which a warrantless search could be conducted pursuant to a lawful arrest. *See, e.g.*, Townsend v. United States, 271 F.2d 445 (4th Cir. 1959) (arrest on first floor, search of second floor sustained), *cert. denied*, 362 U.S. 921 (1960); Gentry v. United States, 268 F.2d 63 (4th Cir. 1959) (arrest in house, search of garage upheld); Warren v. United States, 268 F.2d 691 (8th Cir. 1959) (arrest in apartment, one hour search of apartment sustained); Smith v. United States, 254 F.2d 751 (D.C. Cir. 1958) (arrest on first floor of residence, search of upstairs valid), *cert. denied*, 357 U.S. 937

quirement of reasonableness.[20] In 1969, however, the Court restricted the permissible scope of a warrantless search incident to an arrest in *Chimel v. California*.[21]

In *Chimel*, the suspected burglar of a coinshop was arrested in his home. Subsequent to the arrest, the police conducted an extensive search of his entire house.[22] The Court ruled that the warrantless search in *Chimel* was unreasonable and overturned the defendant's conviction.[23] To ensure that a warrantless search incident to an arrest complied with the reasonableness standard of the fourth amendment, the *Chimel* Court set forth two requirements that limited the previous liberal standards of the search-incident exception.[24] First, the permissible scope of a search incident to a

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(1958); United States v. Jackson, 149 F. Supp. 937 (D.D.C.) (arrest on sidewalk, search of residence upheld), *rev'd on other grounds*, 250 F.2d 772 (D.C. Cir. 1957).

This same liberal application of the search-incident exception occurred when the area searched included an automobile. *See, e.g.*, United States v. Gorman, 355 F.2d 151 (2d Cir.) (search of defendant's locked automobile trunk sustained), *cert. denied*, 384 U.S. 1024 (1965); Crawford v. Bannan, 336 F.2d 505 (6th Cir. 1964) (search of arrestee's vehicle after he was removed from scene by patrol wagon upheld), *cert. denied*, 381 U.S. 955 (1965); Fraker v. United States, 294 F.2d 859 (9th Cir. 1961) (search of automobile after defendant arrested and vehicle impounded upheld).

20. United States v. Rabinowitz, 339 U.S. 56, 66 (1950). Justice Frankfurter's dissenting opinion in *Rabinowitz* articulated the problem of relying solely on a reasonableness standard stating that because of its circular definition, the trier of fact had no guidelines to determine what was reasonable. To say that a search is unreasonable unless it is reasonable begs the question of "what is a reasonable search?" *Id.* at 83 (Frankfurter, J., dissenting).

The *Rabinowitz* Court rejected the standard adopted in Trupiano v. United States, 334 U.S. 699 (1948), which required law enforcement officers to secure a warrant whenever practicable. United States v. Rabinowitz, 339 U.S. 56, 65-66 (1950). *See also* Note, *Scope Limitations for Searches Incident to Arrest*, 78 YALE L.J. 433 (1969) (author argues that *Rabinowitz* rule has failed to protect individuals adequately and should be redrawn).

21. 395 U.S. 752 (1969). The *Chimel* Court expressly overruled *Harris* and *Rabinowitz*. *Id.* at 768. The Court declared that any attempt to justify a warrantless search conducted beyond the area in which the arrestee could gain access could not rationally be founded on fourth amendment principles. *Id.* at 766. Although *Chimel* unquestionably narrowed the area in which a warrantless search incident to an arrest could ensue, it seems rather than overruling *Harris* and *Rabinowitz*, the *Chimel* Court, in essence, simply refined the reasonableness standard pronounced in these two earlier decisions. After *Chimel*, a search was reasonable if it was performed in an area within the arrestee's immediate control, whereas under *Harris* and *Rabinowitz* a search was reasonable anywhere on the premises where the arrest occurred. *See* Michelman, *The Supreme Court, 1968 Term*, 83 HARV. L. REV. 7, 162 (1969).

22. Chimel v. California, 395 U.S. 752, 753-54 (1969). The police attempted to obtain the defendant's consent to "look around," but their request was denied. Consequently, the police informed Chimel that his lawful arrest gave them the authority to conduct a search of the premises. The search performed encompassed every room of the defendant's three-bedroom house, including the attic, garage, and workshop. *Id.*

23. *Id.* at 768. The Court determined that the search extended far beyond the defendant's person and the area in which he might have acquired a weapon or destroyed an evidentiary item. Thus, the Constitution compelled the acquisition of a search warrant. *Id.*

24. In addition to the two requirements, the *Chimel* Court also required that the search be contemporaneous with the arrest. *Id.* at 764 (quoting Preston v. United States, 376 U.S. 364

lawful arrest could only encompass the arrestee's person and the area within his immediate control.[25] The Court defined the arrestee's area of immediate control as the area in which an arrestee might gain control of a dangerous weapon or destructible evidence.[26] Second, the intensity of the search conducted within the area of the arrestee's immediate control was to be tempered by the arrestee's accessibility to a dangerous weapon or destructible evidence.[27] Accordingly, the search of a concealed area within the arrestee's immediate control was deemed reasonable only if the arrestee could gain access to the interior of the area in which a weapon or evidence might be located.[28] Whether a warrantless search complied with the two requirements promulgated in *Chimel* required a case-by-case analysis.[29]

(1964)). The mandate of a contemporaneous search rests on the notion that "a search which is remote in time or place from the arrest" is not justified by the need to protect police and evidence. Preston v. United States, 376 U.S. 364, 367 (1964).

The contemporaneous requirement of *Chimel* was complied with in *Belton*. It was only a matter of minutes after the arrest that the officer performed the search of the vehicle and the defendant's jacket. New York v. Belton, 101 S. Ct. 2860, 2862 (1981).

25. Chimel v. California, 395 U.S. 752, 763 (1969). Justice Stewart, writing for the majority, stated that a weapon or evidence located in a drawer near the arrestee presented as much danger as a weapon or evidence located on the arrestee's person. As such, the majority felt that there was "ample justification" for granting the police the right to search "the arrestee's person and the area 'within his immediate control.' " *Id. See generally* Cook, *Warrantless Searches Incident to Arrest*, 24 ALA. L. REV. 607 (1972); Note, 48 TEX. L. REV. 1194 (1970).

26. 395 U.S. at 763.

27. After recognizing the right to search the area within the arrestee's immediate control, the Court pointed out that there was no justification for searching all drawers or concealed areas which were located within that area of immediate control. *Id.* Thus, the appropriate question is whether the contents of the container searched were accessible to the arrestee at the time of the search. 2 LAFAVE, *supra* note 2, § 5.5, at 349-50.

28. The *Chimel* Court stated that the search must be "strictly 'tied to and justified by' the circumstances which rendered its initiation permissible." Chimel v. California, 395 U.S. 752, 762 (1969) (quoting Terry v. Ohio, 392 U.S. 1 (1968)). Therefore, because the search-incident exception is initiated on the theory of police protection and preservation of evidence, unless the arrestee can gain access to a weapon or destructible evidence that might be located in the container, the search of the container is not a valid search incident to an arrest. As such, the warrant requirement should govern the search. Chimel v. California, 395 U.S. at 763. *See, e.g.*, United States v. Neumann, 585 F.2d 355 (8th Cir. 1978) (contents of box located in automobile not accessible to arrestee once removed from vehicle, search illegal); United States v. Jackson, 576 F.2d 749 (8th Cir.) (contents of file cabinet and attache case near arrestee were not accessible, search invalid), *cert. denied*, 439 U.S. 858 (1978); United States v. Mason, 523 F.2d 1122 (D.C. Cir. 1975) (contents of partially open suitcase located near arrestee were accessible, search sustained); United States v. Harrison, 461 F.2d 1127 (5th Cir. 1972) (contents of cigar box situated on table close to arrestee were accessible, search upheld), *cert. denied*, 409 U.S. 884 (1972); United States v. Ajlouny, 476 F. Supp. 995 (E.D.N.Y. 1979) (contents of unlatched briefcase within a few feet of arrestee's free hand were accessible, search valid), *aff'd on other grounds*, 629 F.2d 830 (2d Cir. 1980), *cert. denied*, 449 U.S. 111 (1981).

29. 395 U.S. at 765. The Court reasoned that the facts and circumstances of each case must be "viewed in the light of established Fourth Amendment principles" in order to determine the reasonableness of the search. *Id. See also* Go-Bart Importing Co. v. United States, 282 U.S. 344, 357 (1931) (there is no adequate formula for determining the reasonableness of a search; each case must be decided on its own facts).

Although the warrantless search performed in *Chimel* occurred in a residence, it was clear, that the two requirements enunciated in *Chimel* were also applicable to the search of an automobile following the arrest and removal of its occupants. One of the key cases relied on by the *Chimel* Court was *Preston v. United States*.[30] In *Preston*, the Court applied the search incident to an arrest analysis to the warrantless search of an automobile. The *Chimel* Court made no suggestion that *Preston* could be distinguished because an automobile, rather than a residence, was the site of the arrest.[31] In both cases the location of the arrest was irrelevant because the focus of the search-incident exception is directed toward police safety and the preservation of evidence.

Chimel was intended to provide the police and courts with a functional standard for determining the constitutionality of a warrantless search incident to an arrest. Nevertheless, lower courts inconsistently interpreted the *Chimel* standard in factually similar situations.[32] To simplify the *Chimel* guidelines for determining the reasonableness of a warrantless search, the Court in *United States v. Robinson*,[33] eliminated the intensity requirement articulated in *Chimel* for searches of the arrestee's person.[34] In *Robinson*, a thorough search of the defendant at the time of his arrest disclosed a

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30. 376 U.S. 364 (1964).

31. In fact, the reasoning of *Preston* supported the outcome in *Chimel*. Chimel v. California, 395 U.S. 752, 764 (1969).

Lower courts have maintained no reservations about utilizing the search-incident exception to uphold the warrantless searches of automobiles. *See* United States v. Marshall, 499 F.2d 76 (5th Cir. 1974), *cert. denied*, 419 U.S. 1112 (1975); Strader v. Estelle, 491 F.2d 969 (5th Cir. 1974), *cert. denied*, 419 U.S. 994 (1974); United States v. Berryhill, 445 F.2d 1189 (9th Cir. 1971); *In re* Kiser, 419 F.2d 1134 (8th Cir. 1969). *See generally* Comment, *Chimel v. California: A Potential Roadblock to Vehicle Searches*, 17 U.C.L.A. L. REV. 626 (1970) (author concludes search incident to arrest should be applied to automobiles and residences in the same manner); Note, *Criminal Law: The Effect of Chimel v. California on Automobile Search and Seizure*, 23 OKLA. L. REV. 447 (1970) (author concludes that the standards of *Chimel* are applicable to searches of automobiles).

32. *Compare* United States v. Frick, 490 F.2d 666 (5th Cir. 1973) (defendant handcuffed and in custody of five federal agents, search of automobile valid), *cert. denied*, 419 U.S. 831 (1974) *and* United States v. Woods, 468 F.2d 1024 (9th Cir.) (defendant placed in squad car, search of automobile valid), *cert. denied*, 409 U.S. 1045 (1972) *and* Patterson v. Lash, 452 F.2d 150 (7th Cir. 1971) (defendant handcuffed and placed in squad car, search of trunk sustained), *cert. denied*, 405 U.S. 1075 (1972) *with* Pace v. Beto, 469 F.2d 1389 (5th Cir. 1972) (defendant separated from vehicle, search of auto interior invalid) *and* United States v. Rowan, 439 F. Supp. 1020 (E.D. Tenn. 1977) (defendant arrested and removed from vehicle, search of bag underneath driver's seat invalid) *and* United States v. Cohen, 358 F. Supp. 112 (S.D.N.Y. 1973) (defendants arrested and handcuffed outside of automobile, search of trunk illegal).

33. 414 U.S. 218 (1973).

34. For a discussion on the impact of the *Robinson* decision, see LaFave, *"Case-by-Case Adjudication" versus "Standardized Procedures": The Robinson Dilemma*, 1974 SUP. CT. REV. 127 (author concludes *Robinson* will open the way for widespread abuse and power of arrest, and a wholesale invasion of an individual's privacy interests); Comment, *Broadening the Scope of a Search Incident to Custodial Arrest: The Burger Court's Retreat from Chimel*, 24 EMORY L.J. 151 (1975) (author suggests that *Robinson* retreated from the restrictions set forth in *Chimel*); Comment, *Searches Incident to Arrest: The Expanding Exception to the Warrant*

crumpled cigarette package in his coat pocket. Upon closer examination of the package's contents, heroin was discovered.[35] The Court ruled the evidence was admissible as the product of a valid search incident to an arrest.[36]

Rather than examining the specific facts to determine whether the arrestee could have gained access to the contents of the package searched, the *Robinson* Court introduced a "standardized procedure" for performing searches of the person.[37] The standard adopted allows police, incident to a lawful arrest, to search the contents of all objects located on the arrestee's person.[38] The Court reasoned that an object located on the arrestee's person always presents a potential danger to police and evidence, thus, eliminating the requirement that there be some quantum level of "intensity" to conduct the search.[39] According to the *Robinson* Court, any police search of a lawfully arrested suspect is a reasonable fourth amendment intrusion.[40] However, it remained unclear whether *Robinson* justified the elimination of *Chimel's* intensity requirement when the police conducted a warrantless search of a package or container within the arrestee's immediate control, but not located on his person.[41]

Requirement, 63 GEO. L.J. 223 (1974) (author concludes that *Robinson* permits judicial sanction of broad law enforcement discretion safely shielded from any challenge from the arrestee).

35. United States v. Robinson, 414 U.S. 218, 223 (1973). In *Robinson*, the defendant was arrested for driving with a revoked license. Following his arrest the police, in accordance with proscribed procedures, made a complete search of the defendant's person. *Id.* at 220-22.

36. *Id.* at 235. The *Robinson* Court reasoned that the lawful arrest established the right to search. Thus, pursuant to a lawful custodial arrest a thorough search of the person was a reasonable search under the fourth amendment. *Id.*

37. *Id.* at 235. Essentially, the Court disagreed with the lower court's finding that the facts of each case must be litigated in order to determine whether the reasons supporting the search incident to arrest were present. Because police were forced to make quick ad hoc judgments on where and how to search the arrestee, a single rule, applying in every situation, was preferred. *Id.*

38. *Id.* at 236. In support of this standard the Court stated that because a lawful custodial arrest was based on probable cause, any search of the person incident to that arrest required no additional justification. Therefore, if the arrest was legal, any search of the person as a result of the arrest was a reasonable fourth amendment intrusion. *Id.* at 235.

39. When a suspect is taken into custody and subsequently transported to the police station, the extended exposure of the policeman to the arrestee places the officer in constant danger. As such, the *Robinson* Court reasoned it would be best to adopt a standardized procedure whereby police could ensure that weapons and evidence were removed from the arrestee's person. *Id.* at 234-35.

40. *Id.* at 235. *Accord* United States v. Wright, 577 F.2d 378, 380 (6th Cir. 1978) (police possess power to search a lawfully arrested person thoroughly); United States v. Johnson, 563 F.2d 936, 939 (8th Cir. 1977) (police may conduct a prompt warrantless search of a person incident to a custodial arrest), *cert. denied*, 434 U.S. 1021 (1978). *See also* United States v. Robinson, 535 F.2d 881, 882-83 (police may not search person if arrest is not justified), *rehearing denied*, 540 F.2d 1086 (5th Cir. 1976).

41. Although the *Robinson* Court did not explicitly limit its decision to searches of the person, it went to great lengths to distinguish searches of the person from searches performed in an area within an individual's control but not on his person. 414 U.S. at 224-26 (1973).

In United States v. Stevens, 509 F.2d 683 (8th Cir.), *cert. denied*, 421 U.S. 989 (1975), the

The Court in *United States v. Chadwick*[42] indicated that the intensity requirement of *Chimel* does apply to searches of containers not located on the arrestee's person.[43] The defendants in *Chadwick* were arrested while standing beside an open automobile trunk. Police officers searched a footlocker which they had removed from the trunk.[44] In suppressing the evidence obtained from the footlocker, the Court ruled that the search was an invalid search incident to an arrest.[45] The *Chadwick* majority reasoned that once police obtained control of a particular container, there was no longer any danger that the arrestee could gain access to a weapon or evidence that might be contained within it.[46] Therefore, a warrantless search

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court rejected the government's assertion that *Robinson* justified the search of a vehicle in which a shot-gun was discovered. The *Stevens* court discerned that *Robinson* was limited to the search of a person incident to a lawful arrest. *Id.* at 687. *Accord* United States v. Edwards, 554 F.2d 1331 (5th Cir. 1977) (*Robinson* disregards the "technical" standards of *Chimel* only for searches of the person), *cert. denied*, 439 U.S. 968 (1978); Dixon v. State, 23 Md. App. 19, 327 A.2d 516 (1974) (*Robinson* did not alter the *Chimel* standards for searches conducted beyond the arrestee's person). Three states have restricted *Robinson* under state law stating that a full search of the person can only be conducted for crimes of which the evidence can be concealed on the person. *See* Zehrung v. State, 569 P.2d 189 (Alaska 1977); People v. Brisendine, 13 Cal. 3d 528, 119 Cal. Rptr. 315, 531 P.2d 1099 (1975); People v. Clyne, 189 Colo. 412, 541 P.2d 71 (1975).

On the other hand, some courts have given *Robinson* a more liberal interpretation. *See, e.g.*, United States v. Eatherton, 519 F.2d 603 (1st Cir.) (court relied on *Robinson* to support search of briefcase), *cert. denied*, 423 U.S. 987 (1975); United States v. Kaye, 492 F.2d 744 (6th Cir. 1974) (court extended *Robinson* to permit container searches beyond the person); State v. Venezia, 515 S.W.2d 492 (Mo. 1974) (court interpreted *Robinson* as permitting full search of auto following driver's arrest).

42. 433 U.S. 1 (1977).

43. *Id.* at 15. The *Chadwick* Court reasoned:

> Once law enforcement officers have reduced luggage or other personal property not immediately associated with the person of the arrestee to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest.

Id.

The dissent argued that to promote effective law enforcement a single rule was necessary which would permit a warrantless search of property seized pursuant to a lawful arrest. *Id.* at 21 (Blackmun, J., dissenting). *See generally* 2 LAFAVE, *supra* note 2, § 5.5 at 351-55; Note, 27 DRAKE L. REV. 421 (1977).

44. 433 U.S. at 4.

45. *Id.* at 15. The search in *Chadwick* occurred more than one hour after the arrest. Federal agents had removed the luggage to the Federal Building before the search ensued. As such, the majority stated: "Warrantless searches of luggage or other property seized at the time of an arrest cannot be justified as incident to that arrest either if the 'search is remote in time or place from the arrest,' . . . or no exigency exists.'" *Id.*

Justice Brennan stated that under the reasoning of *Chimel* it could not be asserted that contents of the footlocker were accessible to the defendants. Thus, the search did not satisfy the purposes of the search incident to an arrest exception. *Id.* at 17 n.2 (Brennan, J., concurring).

46. The Court, however, noted that there would be exceptions to this general rule. For example, when an arresting officer had reason to believe the container within their control contained a "dangerous instrumentality," such as a bomb or explosives, a warrantless search of the container could be executed. *Id.* at 15 n.9.

is unreasonable when luggage or personal property is not located on the arrestee's person and is reduced to the exclusive control[47] of the police. Additionally, the *Chadwick* Court noted that an arrestee's privacy interest in containers in the area within his immediate control merited protection against a warrantless search incident to arrest.[48]

The trilogy of *Chimel, Robinson,* and *Chadwick* strongly suggests that warrantless searches of containers within an arrestee's immediate control, yet not on his person, are not sanctioned by the search incident to an arrest exception. Nonetheless, lower courts confronting this issue have reached inconsistent results when applying the exception to searches of automobiles and containers located therein.[49] Recently, the Court in *New York v. Belton*[50] attempted to eliminate the confusion in this area of warrantless searches.

THE *BELTON* DECISION

Facts and Procedural History

While traveling on the New York Thruway, Roger Belton and three companions were stopped by a state trooper for speeding. While routinely questioning the driver,[51] the trooper smelled burnt marijuana and noticed an envelope on the floor of the car stamped "Supergold." The trooper ordered the occupants out of the automobile and arrested them for unlawful possession of marijuana.[52] The men were then separated into four areas along the

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47. Exclusive control of a receptacle means such control by the police that no danger exists that the arrestee could gain possession of a weapon or destructible evidence located in the receptacle. United States v. Chadwick, 433 U.S. 1, 14-15 (1977). The issue of exclusive control is a question of fact to be decided on a case-by-case basis. New York v. Belton, 101 S. Ct. 2860, 2869 n.5 (1981) (Brennan, J., dissenting).

48. *Id.* at 16 n.10. The *Chadwick* majority noted: "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.*

By placing items in a container, such as luggage, whose purpose serves as a "repository of personal effects," an individual manifests an expectation of privacy in those particular items. *Id.* at 13. Consequently, an intrusion into a container in which an individual maintained a privacy interest would be a greater infringement of an individual's rights than would occur if the container was simply seized until a warrant could be obtained. *Id.* at 13-14 n.8. *Accord* United States v. Calandrella, 605 F.2d 236 (6th Cir. 1979) (once briefcase is reduced to exclusive control of police, privacy interest of individual in briefcase prohibits a warrantless search); United States v. Schleis, 582 F.2d 1166 (8th Cir. 1978) (once personal property is in the exclusive control of police, justification for search evaporates and arrestee's privacy interest prevails); United States v. Stevie, 582 F.2d 1175 (8th Cir. 1978) (luggage which is no longer within the immediate control of the arrestee is protected from warrantless search due to arrestee's privacy interest).

49. *See supra* note 11.

50. 101 S. Ct. 2860 (1981).

51. *Id.* at 2861. The officer asked to see the driver's license and automobile registration. He discovered that no one in the car owned the vehicle or was related to the owner.

52. *Id.* at 2861-62. Prior to this particular incident, the trooper had seen several envelopes

highway out of the reach of one another.[53] Subsequently, the state trooper returned to the automobile, seized the envelope, and discovered that it contained marijuana.[54] The trooper then approached the four men, advised them of their *Miranda* rights,[55] and searched each individual.[56] Following this sequence of events, the state trooper re-entered the automobile and searched the passenger compartment. On the back seat the trooper found five jackets, one of which belonged to Belton. He unzipped the pockets of Belton's jacket and discovered a bag of cocaine.[57] This discovery led to Belton's indictment for the criminal possession of a controlled substance.[58]

The trial court denied the defendant's motion to suppress the admission of the cocaine as evidence. Although the defendant plead guilty to a lesser included offense,[59] he retained his right to contest the constitutionality of the search on appeal.[60] The Appellate Division of the New York Supreme Court upheld the trial court's ruling admitting the evidence as a product of

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with the "Supergold" stamp and in each instance found the envelope to contain marijuana. This past experience, along with the smell of burnt marijuana emanating from the car, induced the trooper to order the occupants out of the vehicle. Brief for Petitioner at 2-3, New York v. Belton, 101 S. Ct. 2860 (1981) [hereinafter cited as Brief for Petitioner].

53. The officer testified that each defendant was removed from the automobile and patted-down in order to ensure that none of the men possessed a weapon. Subsequently, the men were separated so they would not be in physical touching distance of one another. Joint Appendix at A-19, New York v. Belton, 101 S. Ct. 2860 (1981) [hereinafter cited as Joint Appendix].

54. 101 S. Ct. at 2862. In addition to discovering traces of marijuana in the envelope, the arresting officer also discovered several partially smoked "roaches" in the ashtray of the automobile. Brief for Petitioner, *supra* note 52, at 3. This finding provided the officer with sufficient probable cause to place the four men under arrest. Joint Appendix, *supra* note 53, at A-39.

55. Miranda v. Arizona, 384 U.S. 436 (1966). The *Miranda* warnings include:

1. The right to remain silent,
2. [T]hat anything he says may be used against him in a court of law,
3. [T]hat before any interrogation is undertaken he is entitled to the presence and aid of counsel,
4. [I]f he cannot afford an attorney, one will be furnished to him free of charge.

RINGEL, *supra* note 2, at § 44.

56. 101 S. Ct. at 2862. In order to protect the officer and preserve evidence, a thorough search of the arrestee may always be made following the arrest. United States v. Robinson, 414 U.S. 218, 236 (1973); Gustafson v. Florida, 414 U.S. 260, 264 (1973).

57. 101 S. Ct. at 2862. In one pocket of the defendant's jacket the trooper discovered a $20 bill containing a small amount of cocaine. An investigation of another pocket revealed a plastic bag containing a larger quantity of the same substance. Brief for Petitioner, *supra* note 52, at 3.

58. 101 S. Ct. at 2862. *See* N.Y. PENAL LAW § 220.05 (McKinney Supp. 1981).

59. After defendant's motion to suppress the evidence was denied, he pled guilty to the attempted criminal possession of a controlled substance. Brief for Petitioner, *supra* note 52, at 4. *See* N.Y. PENAL LAW § 110.05(8) (McKinney 1975).

60. 101 S. Ct. at 2862. *See* Lefkowitz v. Newsome, 420 U.S. 283 (1975). In *Lefkowitz*, the Court upheld New York's statute granting the right to appeal an adverse decision of a motion to suppress evidence. The fact that defendant pled guilty following the denial of this motion does not affect this right to appeal. *See* N.Y. CRIM. PROC. LAW § 710.70(2) (McKinney 1971).

a lawful search.[61] The New York Court of Appeals, applying the principles of *Chimel* and *Chadwick*, determined that once the jacket was reduced to the exclusive control of the police officer, the arrestee could not have gained access to the jacket pockets.[62] Because the underlying purpose of the search-incident exception did not require that the police officer make a warrantless search of the jacket, the officer's action was unreasonable. Furthermore, the expectation of privacy the defendant maintained in his zipped jacket pockets[63] required that the jacket be seized and a search warrant obtained. Accordingly, the court of appeals reversed the lower court's ruling admitting the seized cocaine as evidence.

The United States Supreme Court granted certiorari[64] to consider whether the area within the immediate control of the arrestee includes the passenger compartment of the automobile, notwithstanding that the arrestee has been removed from the vehicle and placed under custodial arrest.[65] A divided Court[66] held that the articles within the interior of an automobile are "inevitably" within the area to which the arrestee can gain access incident to his arrest.[67] Therefore, the Court concluded that pursuant to a lawful custodial arrest of an automobile's occupant, a warrantless search of the interior of a vehicle and all containers therein was valid under the search incident to an arrest exception.[68]

The Court's Rationale

The *Belton* Court endeavored to establish a workable definition of the

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61. People v. Belton, 68 A.D.2d 198, 416 N.Y.S.2d 922 (1979). The court ruled that the area searched was within the defendant's immediate control as stipulated by Chimel v. California, 395 U.S. 752 (1969). Additionally, the court determined that subsequent to an arrest, a search of any personal property close "at hand" to the arrestee was an insignificant invasion of privacy. 68 A.D.2d at 200, 416 N.Y.S.2d at 924.

62. People v. Belton, 50 N.Y.2d 447, 429 N.Y.S.2d 574, 407 N.E.2d 420 (1980). In a 7-2 decision the court held that Belton retained a privacy interest in the jacket searched. The lawful arrest did not preclude defendant's privacy expectation in the jacket pocket. Therefore, the arrest could not be converted into a right to perform an unrestrained warrantless search. Once the defendant had been removed from the automobile and arrested, a search of the jacket, in the exclusive control of the police, was not a valid search incident to an arrest. *Id.* at 452, 429 N.Y.S.2d at 577, 407 N.E.2d at 423.

63. The majority stated: "Indeed, it is difficult to imagine a more private receptacle where one might place one's most personal items than the zippered recesses of a jacket." *Id.*

64. 449 U.S. 1109 (1981).

65. 101 S. Ct. at 2862.

66. Justice Stewart delivered the majority opinion in which Chief Justice Burger and Justices Blackmun and Powell joined. Justice Rehnquist and Justice Stevens filed concurring opinions. Justice Brennan and Justice White filed separate dissenting opinions in which Justice Marshall joined.

Although Justice Stevens concurred in the decision, he rejected the majority's analysis. Rather, he reasoned that the case should be decided under the automobile exception. *See* Robbins v. California, 101 S. Ct. 2841, 2855 (1981) (Stevens, J., dissenting).

67. 101 S. Ct. at 2864.

68. *Id.*

area within an arrestee's immediate control when that area arguably included an automobile.[69] Initially, the Court reiterated the guidelines established in *Chimel*.[70] Although the immediate control principle of *Chimel* was expressed in lucid terms, the Court recognized the difficulty that lower courts experienced when attempting to apply that principle to the interior of an automobile.[71] Consequently, the Court concluded that it was essential to provide police with predictable guidelines for determining the permissible scope of an automobile search incident to the lawful arrest of its occupants. The *Belton* Court maintained that this could best be accomplished by adopting a single standard rather than by a case-by-case approach.[72]

The "bright line" standard established in *Belton* was based on two premises. First, the Court reasoned that the trend in lower court cases supported the conclusion that the interior of an automobile is "inevitably" within an arrestee's immediate control.[73] Accordingly, police may conduct a

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69. Specifically, the Court wanted to resolve the issue of whether the inside of the automobile could be searched pursuant to the removal and the arrest of the vehicle's occupants. *Id.*

70. *Id.* at 2862-63. The Court reiterated its conviction that a lawful custodial arrest evinces exigencies that make a warrantless search imperative. *Id.* at 2862. For a discussion of the *Chimel* guidelines, see *supra* notes 24-29 and accompanying text.

71. *Id.* at 2863.

72. *Id. See* Dunaway v. New York, 442 U.S. 200, 213-14 (1979) (it is imperative that police be provided with a "single familiar standard"); United States v. Robinson, 414 U.S. 218, 235 (1973) (because of the extended exposure to danger which results from taking a suspect into custody, it is necessary to treat all custodial arrests alike for purposes of search justification).

The *Belton* Court stated:

> A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be "literally impossible of application by the officer in the field."

101 S. Ct. at 2863 (quoting LaFave, *"Case-by-Case Adjudication" versus "Standardized Procedures": The Robinson Dilemma*, 1974 SUP. CT. REV. 127, 141).

Justice Powell, discussing the *Belton* holding, suggested that the exclusionary rule, which suppresses evidence because it was obtained illegally, forces the Court to adopt single standards so the police will not "blunder" in conducting a warrantless search. Otherwise, incriminating evidence will be inadmissible and guilty individuals will be set free. Robbins v. California, 101 S. Ct. 2841, 2848 (1981) (Powell, J., concurring).

Nonetheless, the Court, in Mincey v. Arizona, 437 U.S. 385, 393 (1978), insisted that "the mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment." *Id.*

73. 101 S. Ct. at 2864. No cases are cited by the Court in justification of this conclusion. Furthermore, there are cases which hold that the passenger compartment may not be within the arrestee's control pursuant to his arrest. *See, e.g.*, United States v. Edwards, 554 F.2d 1331 (5th Cir. 1977) (arrestee placed in squad car, search of automobile invalid); United States v. McCormick, 502 F.2d 281 (9th Cir. 1974) (defendant handcuffed near automobile, search of auto illegal); State v. Skrobacki, 331 So. 2d 376 (Fla. Dist. Ct. App. 1976) (arrestee 15 feet from auto and two officers present, search of vehicle invalid); Howell v. State, 271 Md. 378, 318 A.2d 189 (1974) (arrestee forced to lean up against car, search of automobile not sustained); Wilson v. State, 511 S.W.2d 531 (Tex. Crim. App. 1974) (arrestee removed from automobile and doors locked, subsequent search of vehicle prohibited). *But see* United States v. Isham, 501 F.2d 989 (6th Cir. 1974) (arrestee handcuffed with hands in front, search of automobile

warrantless search of the entire passenger compartment incident to the lawful arrest of its recent occupants.[74] Predicated on this determination, the Court concluded that containers situated in the automobile's interior are also accessible to the arrestee and, therefore, are subject to a warrantless search.[75]

The majority rejected any consideration of an arrestee's expectation of privacy in assessing the validity of the container search.[76] Neither the nature of the container,[77] nor the fact that it was open or closed altered police authority to make the search. The Court declared that a lawful custodial arrest permitted an intrusion into any privacy interest the arrestee might have.[78]

Finally, applying the newly formulated standard to the *Belton* facts the Court reasoned that because the jacket was within the interior of the automobile at the time of Belton's arrest, it was within the area of the defendant's immediate control and that the contents of the jacket were accessible to the arrestee.[79] As such, the warrantless search of the jacket was a valid search incident to an arrest.[80]

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sustained); United States v. Woods, 468 F.2d 1024 (9th Cir. 1972) (arrestee placed in squad car, search of vehicle valid); Pinkney v. United States, 360 A.2d 35 (D.C. 1976) (defendant in custody of three officers, one with shotgun, search of automobile sustained).

74. 101 S. Ct. at 2804. The trunk of an automobile was not included in the *Belton* holding. *Id.* at 2864 n.4. Although the Court apparently believes the trunk, passenger compartment distinction is an easy one to apply, the ascertainment of what constitutes a trunk will in many instances be difficult. *See infra* notes 112-15 and accompanying text.

75. *Id.* at 2864. Although the Court stated that a reading of the cases prompted this conclusion, there are a substantial number of cases taking the opposite view. *See, e.g.*, United States v. Rigales, 630 F.2d 364 (5th Cir. 1980) (search of container in auto pursuant to suspect's arrest invalid); United States v. Stevie, 582 F.2d 1175 (8th Cir. 1978) (search of luggage seized from arrestee's automobile invalid). *But see* United States v. Sanders, 631 F.2d 1309 (8th Cir. 1980) (search of package found on automobile floor sustained); United States v. Vento, 533 F.2d 838 (3d Cir. 1976) (search of paper bag discovered in arrestee's automobile valid).

76. 101 S. Ct. at 2864.

77. Container was defined by the *Belton* Court as "any object capable of holding another object." Expressly included in that definition was the glove compartment, boxes, bags, and clothing. Furthermore, the container could be located anywhere within the interior of the automobile with the exception of the trunk. 101 S. Ct. at 2864 n.4.

78. *Id.* at 2864. The Court noted that any search of a container seized from the automobile need not be limited by the probability that the container searched contained a weapon or evidence. Because the arrest was based on probable cause, any search subsequent to that arrest needed no additional justification. *Id.* (quoting United States v. Robinson, 414 U.S. 218, 235 (1973)). If a container's contents are accessible to the arrestee incident to his arrest, it would thwart the purpose of *Chimel* if the police were required to establish probable cause before a search of the area could be effected. The lawful arrest creates the immediate need to search for weapons and destructible evidence. *See* 2 LAFAVE, *supra* note 2, § 7.1 at 504-05; WHITEBREAD, *supra* note 6, § 6.01 at 134-35.

79. 101 S. Ct. at 2865.

80. *Id.* The Court rejected defendant's reliance on United States v. Chadwick, 433 U.S. 1 (1977), as support for his claim that he retained a privacy interest in his jacket following his lawful arrest. The Court stated that in the *Chadwick* case the search did not fall under the

CRITIQUE OF THE DECISION

The *Belton* decision appears to derive logically from the underlying principles of the search incident to an arrest exception. First, based on *Chimel's* immediate control standard, the *Belton* Court stated that the automobile interior and containers therein were "inevitably" within the arrestee's immediate control.[81] Second, employing the rationale invoked in *Robinson*, the Court concluded that the contents of any container within the automobile are accessible to the arrestee and, thus, may be examined by police.[82] Third, the Court disposed of defendant's privacy argument by reasoning that a lawful arrest negates any privacy interest an arrestee might possess.[83] A closer examination of the reasoning utilized in *Belton*, however, reveals deficiencies in the Court's application of *Chimel* and its progeny.[84]

Traditionally, courts applied the *Chimel* immediate control test on a case-by-case basis.[85] In *Belton*, however, the Court retained the *Chimel* principles but expressly rejected a case-by-case adjudication in favor of a single inflexible standard.[86] To reflect the spirit of *Chimel*, the Court's definition

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search-incident exception, and therefore, *Chadwick* did not apply in *Belton*. 101 S. Ct. at 2865. This conclusion is based on faulty logic. Simply because the search in *Chadwick* was found not to fall under the search incident to an arrest exception does not mean that principles concerning the search-incident exception espoused in that case are irrelevant. In Chimel v. California, 395 U.S. 752 (1969), the search was invalid because it did not fall under the search-incident exception, yet the principles enunciated in *Chimel* are the fundamental principles underlying the search-incident exception. *See supra* notes 24-29 and accompanying text. Consequently, the Court's attempt to distinguish *Chadwick* appears questionable.

81. 101 S. Ct. at 2864.

82. *Id.*

83. *Id.*

84. In his dissent in *Belton*, Justice Brennan proclaims that the majority disregards the principles of *Chimel*. As a result, the majority "does a great disservice not only to *stare decisis*, but to the policies underlying the Fourth Amendment as well." 101 S. Ct. at 2868-69 (Brennan, J., dissenting).

Justice Stevens suggests that the *Belton* decision will "provide the constitutional predicate for broader vehicle searches than any neutral magistrate could authorize by issuing a warrant." Robbins v. California, 101 S. Ct. 2841 (1981) (Stevens, J., dissenting).

85. *See* United States v. Berenguer, 562 F.2d 206 (2d Cir. 1977) (arrestees shackled together on bed, billfold on bureau not within their immediate control); United States v. Griffith, 537 F.2d 900 (7th Cir. 1976) (arrest in living room, brown sack in adjacent room not within arrestee's immediate control); United States v. Erwin, 507 F.2d 937 (5th Cir. 1975) (arrest in living room, closet not within immediate control of arrestee); United States v. Becker, 485 F.2d 51 (6th Cir. 1973) (arrest three feet from desk, desk drawers within arrestee's immediate control). In United States v. Jones, 475 F.2d 723 (5th Cir. 1973), the court specifically stated that when a claim is made that a search is valid under the search-incident exception, the court must examine the facts and determine whether the area searched was within the area to which the arrestee could gain immediate control. *Id.* at 728.

Courts also examine the facts to determine whether the automobile was within the arrestee's immediate control incident to the arrest. *See supra* note 73.

86. The *Belton* majority noted: "Our holding today does no more than determine the meaning of *Chimel*'s principles in this particular and problematic content. It in no way alters

of the area within an arrestee's immediate control should have been limited to the area from which an arrestee could gain possession of a dangerous weapon or destructible evidence under the specific circumstances of the arrest.[87]

An examination of the facts in *Belton* demonstrates that the standard instituted by the Court does not comport with the immediate control requirement established in *Chimel*. Belton and his companions were removed from the vehicle and separated along the side of the highway.[88] The interior of the automobile was not realistically within the defendant's immediate control. Moreover, the jacket, located in the back seat of the two-door automobile, was not readily accessible to Belton.[89] Under these circumstances there was clearly no threat to the safety of police or the preservation of evidence.[90] By abdicating case-by-case adjudication in favor of a "bright line" standard, the *Belton* Court expanded the scope of immediate control articulated in *Chimel*[91] to a point where it eviscerates the purposes underlying the search incident to an arrest exception.

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the fundamental principles established in the *Chimel* case regarding the basic scope of searches incident to lawful custodial arrests." 101 S. Ct. at 2864 n.3.

87. In Chimel v. California, 395 U.S. 752, 763 (1969), the Court adopted the "grabbing" distance as an adequate characterization of the area within the arrestee's immediate control. Other courts have defined immediate control in rather unique manners. *See, e.g., In re* Kiser, 419 F.2d 1134, 1137 (8th Cir. 1969) (within leaping range); State v. Bracco, 15 Or. App. 672, 676, 517 P.2d 335, 337 (1973) (within lunging distance).

88. *See supra* note 53.

89. To gain control of the interior of the vehicle the defendant would have been required to overcome the policeman and re-enter the automobile. This sequence of events seems highly improbable. Where the officer is positioned between the arrestee and the area searched, courts have been inclined to rule the search invalid. *See, e.g.*, United States v. Scios, 590 F.2d 956 (D.C. Cir. 1978) (officer between arrestee and folder searched, search invalid); United States v. Mapp, 476 F.2d 67 (2d Cir. 1973) (officer between arrestee and closet searched, search illegal). *See also* United States v. Becker, 485 F.2d 51 (6th Cir. 1973) (no officers between arrestee and chest, search sustained).

90. An examination of the trooper's testimony reveals that the search was not conducted for the purpose of police protection or preservation of evidence. Not once did the policeman pull out his revolver or feel he had reason to do so. Joint Appendix, *supra* note 53, at A-32. Moreover, the officer had already seized the evidence required to substantiate a conviction of the defendant for the unlawful possession of marijuana. 101 S. Ct. at 2862.

91. The Court's conclusion that the interior of an automobile is inevitably within the arrestee's immediate control seems questionable considering the difficulty the New York courts experienced in attempting to resolve this case. *See generally* Lewis, Mannle & Allen, *The Burger Court and Searches Incident to a Lawful Arrest: The Current Perspective*, 7 CAP. U. L. REV. 1 (1977) (the authors discuss the willingness of the Burger Court to prefer practical problems of law enforcement over fourth amendment standards).

Several factors can be used to determine whether the automobile searched was within defendant's immediate control.

1. Whether the arrestee was placed in some type of restraint.
2. The location of the officer and the arrestee in relation to the car.
3. The ease of gaining entry into the vehicle.
4. The number of officers in relation to the number of arrestees.

2 LAFAVE, *supra* note 2, § 7.1 at 502-03.

After *Belton*, if a driver is removed from his vehicle, arrested, and subsequently handcuffed

Even accepting the Court's conclusion that an automobile and all containers therein are inevitably within an arrestee's immediate control, the Court's conclusion that the containers' contents are likewise accessible is an unwarranted extension of the search-incident exception. *Chimel* required that a search of objects determined to be within an arrestee's immediate control be limited in its intensity.[92] As was true with the immediate control requirement, the intensity issue was resolved by a factual analysis of each case.[93] Hence, the contents of a container within the arrestee's immediate control could only be examined when the facts indicated that the arrestee had access to those contents at the time of the search.[94]

An examination of the *Belton* facts indicates that the search of the jacket did not comply with the intensity requirement enunciated in *Chimel*. The defendant was separated from the automobile. Moreover, the cocaine was located in a zipped jacket pocket resting on the back seat of the vehicle.[95] Due to his separation from the car and jacket, it is beyond reason to assume that the defendant had access to the contents of the jacket pockets.[96] Thus, because the defendant lacked access to the pockets' contents, the *Belton* search cannot be characterized as one prompted by the need to protect police or preserve evidence.

The Court stated that *Robinson* provided justification for the search of the jacket in *Belton*.[97] Not only is this position unique to search-incident principles, but it also disregards the reasoning underlying *Robinson*. *Robinson* permitted the unrestricted search of a container's contents when the container searched was located on the arrestee's person.[98] Because the con-

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and placed in a squad car, a warrantless search of the arrestee's automobile will be permitted because it is "inevitably" within the arrestee's immediate control. It would be hard to maintain that a search under these circumstances was performed in order to protect police and preserve evidence.

92. *See supra* notes 27-28 and accompanying text.

93. *See* United States v. Garcia, 605 F.2d 349 (7th Cir. 1979) (hand carried briefcase capable of being quickly opened in order to gain access to contents, search sustained); United States v. French, 545 F.2d 1021 (5th Cir. 1977) (contents of suitcase within arm's length of defendant accessible, search valid); United States v. Weaklem, 517 F.2d 70 (9th Cir. 1975) (contents of file cabinet two feet from arrestee accessible, search valid); United States v. Ajlouny, 476 F. Supp. 995 (E.D.N.Y. 1979) (contents of unlatched briefcase several feet from defendant accessible, search sustained); State v. Brasel, 538 S.W.2d 325 (Mo. 1976) (contents of briefcase which could be released by push of a button accessible, search valid).

94. The *Chimel* Court stated that "closed or concealed areas" within the arrestee's immediate control were not automatically subject to a warrantless search. Chimel v. California, 395 U.S. 752, 763 (1969).

95. 101 S. Ct. at 2862.

96. Justice Brennan argues that once the four men were removed from the vehicle, searched, and separated, none of them had access to the jackets or their contents. *Id.* at 2867 (Brennan, J., dissenting).

97. The *Belton* Court relied on United States v. Robinson, 414 U.S. 218 (1973), and Draper v. United States, 358 U.S. 307 (1959), to conclude that containers located in the automobile interior were subject to a warrantless search incident to an arrest. 101 S. Ct. at 2864. Both *Robinson* and *Draper* involved searches of contents located on the arrestee's person and, consequently, do not substantiate the conclusion arrived at in *Belton*.

98. *See supra* notes 34-40 and accompanying text. Lower courts applying *Robinson* have

tents of a container located on the person are always accessible, the *Robinson* Court correctly reasoned that these contents always present a threat to police and endanger the preservation of evidence.[99] A case-by-case analysis is not necessary when a search of the person is involved, and therefore, the intensity requirement mandated in *Chimel* was eliminated.[100]

Although it was reasonable to eliminate the intensity requirement in *Robinson*, no comparable justification exists for its elimination in *Belton*. Because the jacket searched in *Belton* was not on the arrestee's person, it was improbable that the defendant could have gained access to anything in the jacket's pockets.[101] Consequently, the safety of the police officer and the preservation of evidence were not jeopardized in *Belton*.[102] The elimination of the intensity requirement in *Belton* unjustifiably disregards the purposes underlying the search-incident exception. As a result, *Belton* substantially diminishes *Chimel's* protection against unreasonable searches.

An additional flaw in the *Belton* decision precipitates from the Court's refusal to acknowledge the privacy interest recognized in *Chadwick*.[103] In *Chadwick*, the Court declared that an individual maintained a privacy interest in a container not located on his person when personalty was concealed within the container,[104] and that a lawful arrest did not negate this privacy

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also permitted searches of containers located on the arrestee. *See, e.g.*, United States v. Sheehan, 583 F.2d 30 (1st Cir. 1978) (upheld search of wallet pursuant to defendant's arrest); United States v. King, 493 F.2d 487 (5th Cir. 1974) (upheld search of arrestee which revealed narcotics); United States v. Moore, 463 F. Supp. 1266 (S.D.N.Y. 1979) (sustained search of camera case carried by defendant).

99. *See supra* note 39. In United States v. Chadwick, 433 U.S. 1 (1977), the Court stated that the right to make a full search of the person recognized in *Robinson* was justified because of "the potential dangers lurking in all custodial arrests." *Id.* at 14-15.

100. The *Robinson* Court declared that neither the history of the search incident to arrest, nor the practice in this country required a "case-by-case adjudication." United States v. Robinson, 414 U.S. 218, 235 (1973).

101. *See supra* notes 94-96 and accompanying text. It seems unlikely Belton could have entered the auto, grabbed the jacket, unzipped the pockets, and destroyed the cocaine before the trooper would have had time to react. Lower courts are reluctant to sustain searches in which the container's contents were not accessible at the time of the search. *See, e.g.*, United States v. Cueto, 611 F.2d 1056 (5th Cir. 1980) (search of suitbag in motel room where arrest occurred invalid); United States v. Neumann, 585 F.2d 355 (8th Cir. 1978) (search of box in auto after defendant removed from vehicle invalid); United States v. Rowan, 439 F. Supp. 1020 (E.D. Tenn. 1977) (search of bag under automobile seat after arrestee removed invalid). *Cf.* United States v. Wright, 577 F.2d 378 (6th Cir. 1978) (officer cannot move luggage to a position accessible by defendant in order to perform a warrantless search).

102. *See supra* note 90.

103. *See supra* notes 46-48 and accompanying text.

104. United States v. Chadwick, 433 U.S. 1, 12-13 (1977). The *Chadwick* Court stated that when an individual placed items inside a locked footlocker he "manifested an expectation" that the items would remain free from public examination. *Id.* at 11.

Although the Court in *Chadwick* only recognized an individual's privacy interest with respect to a locked footlocker, Arkansas v. Sanders, 442 U.S. 753 (1979), made it clear that any container may merit fourth amendment protection. *Id.* at 764. One exception recognized in *Arkan-*

interest.[105] To enhance the protection of this privacy interest, the Court reasoned that once a container was within the exclusive control of a police officer, a warrantless search could not be upheld under the search-incident exception.[106]

An application of the *Chadwick* analysis to the *Belton* facts suggests that the privacy interest maintained by Belton prohibited the search of the jacket. First, by placing contents into a zipped jacket pocket Belton overtly displayed an expectation of privacy.[107] Second, the defendant, as previously discussed, did not have access to the jacket pocket's contents. When the officer seized the jacket it was in his exclusive control, and there was no danger that the arrestee could have seized a weapon or any evidence located in the jacket.[108] The privacy interest of the arrestee should have prevailed under these circumstances.

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sas is if the container, by its very nature, could not justify a reasonable expectation of privacy because its appearance indicated the character of the contents therein. For example, a gun case or burglary kit would not retain an individual's privacy interest. *Id.* at 764-65 n.13.

Justice Harlan, in Katz v. United States, 389 U.S. 347 (1967), suggested a two-part test to determine what privacy interests warranted fourth amendment protection. First, a person must exhibit a subjective expectation of privacy, and second, society must recognize that expectation as reasonable. *Id.* at 361 (Harlan, J., concurring).

105. United States v. Chadwick, 433 U.S. 1, 16 n.10 (1977). *Accord* United States v. Calandrella, 605 F.2d 236 (6th Cir. 1979) (custodial arrest does not diminish arrestee's expectation of privacy in containers within his immediate control); United States v. Simmons, 567 F.2d 314 (7th Cir. 1977) (custodial arrest does not obviate arrestee's privacy interest in containers within his immediate control).

106. 433 U.S. at 15. In United States v. Calandrella, 605 F.2d 236 (6th Cir. 1979), the court relied on *Chadwick* to invalidate the search of a briefcase incident to its owner's arrest. The court appropriately concluded:

> Although the briefcase was apparently within the immediate area around the defendant at the time he was arrested, . . . we believe that once the agents had seized the item and reduced it to their exclusive control there was no further danger that the defendant would secure therefrom either a weapon or an instrumentality of escape, or would destroy evidence contained in the briefcase. Thus the interests sought to be protected by permitting warrantless searches incident to an arrest were fully vindicated by the seizure of the briefcase at the time of the arrest.

Id. at 249 (citations omitted). *Accord* United States v. Schleis, 582 F.2d 1166 (8th Cir. 1978) (once briefcase within exclusive control of police, justification to search incident to arrest dissipates); United States v. Edwards, 577 F.2d 883 (5th Cir.) (individual enjoys expectation of privacy interest in items within automobile, arrest alone is insufficient justification to search), *cert. denied*, 439 U.S. 968 (1978). *See also* United States v. Cornejo, 598 F.2d 554 (9th Cir. 1979) (search of purse would have been invalidated had court applied *Chadwick* retroactively); United States v. Mancillas, 580 F.2d 1301 (7th Cir.) (once police assumed control of package, no justification to search incident to an arrest), *cert. denied*, 439 U.S. 958 (1978).

107. *See supra* note 63.

108. *See* People v. Belton, 50 N.Y.2d 447, 429 N.Y.S.2d 574, 407 N.E.2d 420 (1980). The court noted that the dissenter's claim that the jackets were within the immediate control of the arrestees and not in the exclusive control of the trooper was not supported by the record. *Id.* at 452 n.2, 429 N.Y.S.2d at 577 n.2, 407 N.E.2d at 423 n.2.

The *Belton* Court relied on *Robinson* to support the rejection of the arrestee's privacy claims.[109] *Robinson*, however, permitted the invasion of privacy only when the containers were found on the person. Because the contents of a container located on the person always present a danger to police or can easily be destroyed or disposed of by the arrestee, it was reasonable for the *Robinson* Court to conclude that the privacy interests of the defendant were outweighed. In *Belton*, however, the location of the jacket eliminated any possibility of it posing a danger to the officer or the evidence.[110] Thus, the defendant's privacy interests should have outweighed the need to conduct a warrantless search of the jacket.[111]

IMPACT

The *Belton* Court adopted a single standard for determining the area within an arrestee's immediate control when the area involves an automobile. Although *Belton* will alleviate some indecision of police in performing a warrantless automobile search following the arrest of its occupants,[112] several aspects of the decision are problematic. First, the *Belton* Court expressly excluded the trunk from its holding,[113] but provided no indication of what areas are included in the definition of a trunk. Consequently, *Belton* offers no guidance when the area searched involves a station wagon, hatchback, motor home, or van.[114] In each of these situations, the arresting officer must make the same quick, on-the-spot assessment of

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109. 101 S. Ct. at 2864. In *Robinson*, Justice Powell stated that a lawful custodial arrest permitted an intrusion of all privacy interests an individual might maintain in his person. United States v. Robinson, 414 U.S. 218, 237-38 (1973) (Powell, J., concurring). *See also* United States v. Edwards, 415 U.S. 800 (1974) (search of arrestee's clothing pursuant to arrest sustained); Gustafson v. Florida, 414 U.S. 260 (1973) (search of cigarette box located on arrestee following his arrest upheld).

110. *See supra* notes 101-02 and accompanying text.

111. *Cf.* United States v. Berry, 560 F.2d 861 (7th Cir. 1977). The court in *Berry* concluded that an arrestee's privacy expectation in containers within his immediate control, but not on his person, was not diminished as a result of the arrest. Consequently, those containers not located on the arrestee's person but within his immediate control could only be searched if a danger existed that the arrestee could gain access to a weapon or evidence that might be located in the container. *Id.* at 864.

112. After *Belton*, all that is required for police to conduct a warrantless search of the interior of an automobile is a lawful custodial arrest of the occupants in the automobile. *See* 101 S. Ct. at 2864.

113. *Id.* at 2864 n.4.

114. Justice Brennan argued that the Court's "bright-line" rule may succeed in routine cases, but in the end it will create more problems than it solves. *Id.* at 2869 (Brennan, J., dissenting).

Even if the Court eventually sets forth specific guidelines delineating what a trunk includes, other inequities exist. For example, to protect a locked trunk from a warrantless search, but permit the search of a locked suitcase in the passenger compartment seems unreasonable. Presumably, the trunk cannot be searched because its contents present no danger to the police, and the arrestee could not destroy evidence located within the trunk. Logic suggests the same conclusion for a latched suitcase in the backseat of an automobile.

what constitutes a trunk as was necessary after *Chimel* to determine what area was in the defendant's immediate control.[115] In essence, the Court has created the same inadequacies it purports to remedy.

In addition, *Belton* authorizes the elimination of the intensity requirement any time a container searched is deemed to be within the arrestee's immediate control.[116] Thus, *Belton* extends the *Robinson* rationale to situations not involving searches of the person. *Belton* rejected the intensity requirement of *Chimel* not because an automobile was involved, but because the Court reasoned that the container's contents are always accessible when the container is within the arrestee's immediate control. The *Belton* majority made no indication that containers in an automobile receive a lesser degree of protection under the search-incident exception than containers in any other location.[117] After *Belton*, containers located within the arrestee's immediate control will be subject to a warrantless search regardless of the arrestee's accessibility to the container's contents.

Further, the *Belton* Court's utilization of the term "lawful custodial arrest" may have a significant impact on fourth amendment concerns. A lawful custodial arrest is defined as an arrest for which the police may legally confine or detain the arrestee.[118] In some states, a police officer may make a custodial arrest for any motor vehicle violation.[119] Consequently, if

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115. This is precisely what the *Belton* Court set out to eliminate. *See* 101 S. Ct. at 2863.

116. Although some courts may eliminate the intensity standard only when the containers located within the arrestee's immediate control are positioned in an automobile's interior, the *Belton* opinion does not demand such a restricted reading. *Id.* at 2869-70 (Brennan, J., dissenting). Generally, the search-incident exception is applied in the same manner in all locations. *See supra* notes 30-31 and accompanying text. The only exception prior to *Belton* was the elimination of the intensity element in the search of an arrestee's person incident to his arrest. *See* Robinson v. United States, 414 U.S. 218 (1973). Thus, it appears reasonable to assume that *Belton* may be utilized to permit the search of any container within the arrestee's immediate control regardless of the circumstances surrounding the search.

117. Because the *Belton* Court does not distinguish containers located in automobiles from containers located in other areas, courts in the future may arguably utilize *Belton* to uphold unrestrained container searches in locations other than the automobile. *See* 101 S. Ct. at 2869 (Brennan, J., dissenting). In the past, however, when containers were within an arrestee's immediate control, but not on his person, the goods were seized and a search warrant obtained. *See, e.g.*, United States v. Cueto, 611 F.2d 1056 (5th Cir. 1980) (valet bag may be seized, but warrantless search is invalid); United States v. Frazier, 545 F.2d 71 (8th Cir. 1976) (car could have been seized first and searched after a warrant was obtained), *cert. denied*, 429 U.S. 1078 (1977); Cabbler v. Superintendent, Va. State Penitentiary, 528 F.2d 1142 (4th Cir. 1975) (seizure of personalty when arrested away from home upheld, but must obtain warrant to search), *cert. denied*, 429 U.S. 817 (1976).

This unrestrained right to search containers within the arrestee's immediate control clearly contradicts *Chimel*. *See supra* notes 92-94 and accompanying text.

118. *See supra* note 14.

119. *See, e.g.*, IOWA CODE ANN. §§ 321.482, 321.485 (West Supp. 1981); KAN. STAT. ANN. § 8-2105 (Supp. 1978). In Texas, the police may make a custodial arrest for any traffic violation except speeding. *See* TEX REV. CIV. STAT. ANN. art. 6701(d), §§ 147-153 (Vernon 1977 & Supp. 1981); Tores v. State, 518 S.W.2d 378 (Tex. Crim. App. 1975). Michigan permits officers to take traffic violators into custody only for certain violations. *See* MICH. COMP. LAWS

an individual in one of these states is stopped for any traffic violation, *Belton* provides authority for police to perform a warrantless search of the automobile's interior and all containers therein.[120] The only protection an individual may have from an arguably unreasonable search will derive from state statutes which restrict the use of custodial arrests.[121] Obviously, this is not the result intended by the search-incident exception.

The *Belton* Court's departure from the traditional search-incident analysis also represents an effort to avoid recent limitations placed on searches performed under the automobile exception.[122] The automobile exception per-

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§§ 257.727-28 (1970 & Supp. 1981). In addition, states such as Illinois permit a custodial arrest for failure to produce a satisfactory bond following a traffic violation. *See* People v. Mathis, 55 Ill. App. 3d 680, 371 N.E.2d 245 (1977).

120. Justice White concluded that *Belton* permits searches of containers in an automobile even though police may have no suspicion that the containers "contain anything in which the police have a legitimate interest." 101 S. Ct. at 2870 (White, J., dissenting).

Presently, the Court has yet to place any restrictions on police authority to make a custodial arrest pursuant to a traffic offense. *See* Pennsylvania v. Mimms, 434 U.S. 106 (1977); United States v. Robinson, 414 U.S. 218 (1973); Gustafson v. Florida, 414 U.S. 260 (1973).

In both People v. Clyne, 189 Colo. 412, 541 P.2d 71 (1975), and State v. Martin, 253 N.W.2d 404 (Minn. 1977), the courts concluded that the issue of whether a custodial arrest for a minor traffic violation is constitutionally permissible is undecided. Some courts, however, have concluded that this issue has been answered affirmatively. *See, e.g.*, Bur v. Gilbert, 415 F. Supp. 335, 342 (E.D. Wis. 1976) (while logic may dictate that a custodial arrest should not be the practice for a minor violation, that is not the law); State v. Lohff, 87 S.D. 693, 214 N.W. 2d 80 (1974) (court summarily dismissed defendant's claim that a citation, rather than an arrest, should have been issued). *See generally* 2 LAFAVE, *supra* note 2, § 5.2; MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 230.2 (Proposed Official Draft 1975) [hereinafter cited as MODEL CODE].

In addition, even when a custodial arrest is made for a violation such as drunk driving, it seems unnecessary to permit police to search every container within the interior of the arrestee's automobile. Nonetheless, *Belton* provides the police with authority to search any luggage, package, or container located in the drunk driver's automobile.

121. There have been a number of attempts to reform this area of the law. The common suggestion is that the issuance of citations, rather than custodial arrests, should follow a minor violation. *See* MODEL CODE, *supra* note 120, § 120.2; UNIF. R. CRIM. P. Rule 211 (1974).

For a discussion on the use of citations, see Berger, *Police Field Citations in New Haven*, 1972 WIS. L. REV. 382 (author concludes citation procedure provides an effective and workable alternative to the arrest process); Feeney, *Citation in Lieu of Arrest: The New California Law*, 25 VAND. L. REV. 367 (1972) (citation procedure will result in a more efficient and sensible way to treat those charged with a crime).

122. Two recent cases, Arkansas v. Sanders, 442 U.S. 753 (1979), and Robbins v. California, 101 S. Ct. 2841 (1981), restricted the ability of police to search containers in an automobile under the automobile exception. *See* Comment, *Search and Seizure—Carroll Doctrine—Automobile Exception*, 26 N.Y.L. SCH. L. REV. 366 (1981) (*Arkansas* strengthens warrant requirement and fosters fourth amendment protection); Note, 11 SETON HALL 121 (1980) (containers found in automobile cannot be searched without a warrant under the automobile exception); Note, 55 WASH. L. REV. 871 (1980) (*Arkansas* severely limits the extent containers located in the automobile may be searched under the automobile exception).

For a discussion of the development of the automobile exception, see Moylan, *The Automobile Exception: What It Is and What It Is Not—A Rationale in Search of a Clearer Label*, 27 MERCER L. REV. 987 (1976). *See generally* 1 RINGEL, *supra* note 2, § 10.3; WHITEBREAD, *supra* note 6, §§ 7.01-7.06.

mits a warrantless search of an automobile when there is probable cause to believe that the vehicle contains evidence of a crime.[123] Recently, a limitation was placed on warrantless searches performed under the auspices of the automobile exception which required that a warrant be obtained to search closed containers in an automobile.[124] This recognition of privacy interests severely restricted the power of police.[125]

Faced with this restriction on police power, it appears that the *Belton*

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123. Originally, justification for the automobile exception was based on exigent circumstances. That is, once an officer had probable cause to believe evidence was located in the automobile, the threat that the automobile may have been moved and evidence lost permitted police to make an immediate warrantless search of the vehicle. *See* Carroll v. United States, 267 U.S. 132, 151-53 (1925). However, as the automobile exception developed, the requirement of mobility dissipated. In Chambers v. Maroney, 399 U.S. 42 (1970), and Cooper v. California, 386 U.S. 58 (1967), the defendants had been placed under arrest and removed to the station. There was no possibility of the car being moved and evidence destroyed. Although no threat of mobility existed, the Court upheld a search of the automobile and its contents in both cases. Consequently, after *Chambers*, all that was necessary to examine the contents of an automobile was probable cause. This result prompted strong criticism of the automobile exception. *See, e.g.*, Wilson, *The Warrantless Automobile Search: Exception Without Justification*, 32 HASTINGS L.J. 127 (1980) (arguing the search of an interior of an automobile should be treated the same as the search of any other premises); Note, *Warrantless Searches and Seizures of Automobiles*, 87 HARV. L. REV. 835 (1974) (arguing that an individual's privacy interests must be protected); Note, *Mobility Reconsidered: Extending the Carroll Doctrine to Movable Items*, 58 IOWA L. REV. 1134 (1973) (suggesting that clarification of the automobile exception is needed); Note, *Misstating the Exigency Rule: The Supreme Court v. The Exigency Requirement in Warrantless Automobile Searches*, 28 SYRACUSE L. REV. 981 (1977) (criticizing the abandonment of exigent circumstances and offering the use of privacy interests as a viable alternative).

124. *See supra* note 122. In Arkansas v. Sanders, 442 U.S. 753 (1979), the Court suggested that any container in which an individual maintained an expectation of privacy could not be searched under the automobile exception absent exigent circumstances. *Id.* at 764-65. Justice Blackmun criticized the majority in *Arkansas*, arguing that it would be impossible for police to determine what containers warranted protection of an individual's privacy interest. *Id.* at 772 (Blackmun, J., dissenting). Consequently, in Robbins v. California, 101 S. Ct. 2841 (1981), a plurality of the Court ruled that no container in an automobile could be searched without a warrant under the automobile exception. *Id.* at 2846. Although Justice Powell concurred in the judgment, he concluded that the blanket warrant requirement only should apply to containers located in the trunk of the vehicle. *Id.* at 2848-49 (Powell, J., concurring).

After *Robbins*, it is clear no containers in the trunk may be searched without a warrant. Because *Robbins* was only a plurality, it appears that items not exhibiting an individual's expectation of privacy (i.e., a dixie cup or cigar box), may still be searched without a warrant when located in the passenger compartment of an automobile under the automobile exception. *Id.* at 2850 n.3 (Powell, J., concurring). However, *Robbins* does require a search warrant for all containers in which an individual maintains a privacy interest if those containers are located in the passenger compartment and the search is conducted under the auspices of the automobile exception. *Id.* at 2846-47.

125. *See, e.g.*, United States v. Dien, 609 F.2d 1038 (2d Cir. 1979) (marijuana discovered in sealed cardboard box in arrestee's automobile inadmissible); United States v. Meier, 602 F.2d 253 (10th Cir. 1979) (marijuana discovered in search of backpack located in automobile inadmissible); Moore v. State, 268 Ark. 171, 594 S.W.2d 245 (1980) (search of shaving kit located in automobile invalid); People v. Rinaldo, 80 Ill. App. 3d 433, 399 N.E.2d 1027 (1980) (search of box located in automobile invalid).

Court, rather than condoning unjustifiable inconsistencies within the automobile exception,[126] reasoned that the search-incident exception could be utilized to eliminate the privacy restrictions imposed on police power.[127] To render the search-incident exception effective for that purpose, the *Belton* Court found it necessary to reject privacy concerns.[128] Consequently, recognition of an individual's privacy interest in a container will be contingent on the exception under which the validity of the search is argued.[129]

Because of the importance of an individual's privacy interests, the particular warrant exception argued by a prosecuting attorney should not determine the recognition of these interests. If a person maintains an expectation of privacy in a container, he or she does so regardless of the theory relied on by the prosecution to justify a warrantless search.[130] After *Belton*, however, pursuant to the arrest of a vehicle's occupant, the search-incident exception authorizes a warrantless search of a closed piece of luggage located in the passenger compartment of the automobile.[131] Yet, the automobile exception would prohibit a search in the same scenario.[132] Inevitably, the expansion of the search-incident exception in *Belton* will

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126. The *Belton* majority avoided the automobile exception in its analysis. 101 S. Ct. at 2865 n.6. Justice Rehnquist joined the opinion of the Court due to this avoidance. *Id.* at 2865 (Rehnquist, J., concurring).

Justice Powell recognized the confused state of the automobile exception. He stated that "the Court apparently cannot agree even on what it has held previously, let alone on how these cases should be decided." Robbins v. California, 101 S. Ct. 2841, 2848 (1981) (Powell, J., concurring).

127. It might have been predicted that the Court would reject the recognition of privacy interests under the search-incident exception after its decision in Arkansas v. Sanders, 442 U.S. 753 (1979). In *Arkansas*, the Court stated that in order for police to search luggage located in an automobile without a warrant, some exception other than the automobile exception would have to be utilized. *Id.* at 766.

128. 101 S. Ct. at 2864.

129. *See* Robbins v. California, 101 S. Ct. 2841, 2845 (1981). The *Robbins* Court stated that luggage taken from an automobile should receive the same protection as luggage seized in any other location. *See also* Arkansas v. Sanders, 442 U.S. 753, 763-64 (1979) (no greater need for warrantless searches of luggage taken from autos than from luggage taken from other places).

130. When a search of an automobile is made pursuant to an arrest, the prosecuting attorney may argue that the automobile exception or the search-incident exception permitted the search. In United States v. Chadwick, 433 U.S. 1 (1977), the attorney for the government argued that both exceptions permitted the search. *Id.* at 11-15. In Arkansas v. Sanders, 442 U.S. 753 (1979), and Robbins v. California, 101 S. Ct. 2841 (1981), even though an arrest occurred pursuant to the search of containers, the cases were argued under the automobile exception.

After *Belton*, the search-incident exception will probably be used exclusively by prosecuting attorneys because of the *Belton* Court's refusal to recognize effectively an individual's privacy interests under this exception. *Belton* provides the police with a greater power to search than the automobile exception does when the search occurs pursuant to an arrest. The only time the automobile exception remains valuable is when no lawful arrest is made and there is probable cause that evidence of a crime is located within the automobile. However, even a search under these circumstances has been severely limited. *See supra* notes 122 & 124.

131. 101 S. Ct. at 2864.

132. *See supra* note 124.

substantially reduce the use of the automobile exception and erode the protection of an arrestee's privacy interest.

CONCLUSION

The *Belton* Court held that automobiles and containers therein could be searched incident to the arrest of the vehicle's occupants. It did so in an effort to provide police with a single workable standard that would maximize police efficiency. Unfortunately, the standard adopted by the Court fosters more confusion than it eliminates and ultimately subjects an automobile's interior and all containers therein to unreasonable searches.

In addition, the Court's refusal to acknowledge privacy interests disregards recent Court cases that unequivocally recognized these interests in containers not located on the person. Apparently, the *Belton* Court chose to provide police with greater power under the search-incident exception to avoid limitations caused by the recognition of an individual's privacy interest in container searches performed under the automobile exception. *Belton's* expansion of the search-incident exception, however, undermines the two requirements articulated in *Chimel*. These two requirements had been established to protect an individual from unreasonable searches. If *Chimel* is to remain a valuable tool in the determination of permissive guidelines for a warrantless search, the Court should not interpret it as justification for instituting inflexible standards. To do so raises doubt as to the constitutionality of searches conducted under the search-incident exception.

Thomas R. Canham