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# EXPANDING THE AUTOMOBILE SEARCH INCIDENT TO ARREST: *NEW YORK v. BELTON*

## I. INTRODUCTION

The United States Supreme Court's interpretation of the fourth amendment has fluctuated over the past fifty years, particularly with regard to the warrant exception of the search incident to arrest doctrine. Last term, the Court decided *New York v. Belton*<sup>1</sup> in yet another attempt to clarify and define the proper scope of such a search. In *Belton* a plurality held that whenever an occupant of a car is arrested the police may search the entire passenger compartment and all the containers therein.<sup>2</sup>

The Court's attempt to formulate "bright line rules," such as that announced in *Belton*, is consistent with recent Court attempts to enunciate simple rules which can easily be applied to complex factual situations encountered by the police.<sup>3</sup> The actual rule announced in *Belton*, however, cannot easily be reconciled with prior decisions, even though the Court pronounced that *Belton* merely clarifies the existing law.<sup>4</sup> The Court has reinterpreted prior law to conclude that *Belton* does not disturb the delicate intricacies that govern warrantless searches.

### *New York v. Belton: Facts of the Case*

On April 9, 1978, Trooper Nicot, a New York State policeman driving an unmarked car on the New York Thruway, was passed by another automobile traveling at an excessive rate of speed. Nicot gave chase and ordered the driver to pull over and stop. There were four men in the car, one of whom was Roger

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1. 101 S. Ct. 2860 (1981).

2. *Id.* at 2864.

3. See *United States v. Robinson*, 414 U.S. 218 (1973); *Gustafson v. Florida*, 414 U.S. 260 (1973) (holding that the police have an automatic right to search the person of an arrestee in any custodial arrest).

4. See, e.g., *Chimel v. California*, 395 U.S. 752 (1969) (leading case for the search incident to arrest doctrine).

Belton. Trooper Nicot approached the car, asked for the driver's license and car registration and discovered that none of the men owned the vehicle or were related to the owner. At the same time Trooper Nicot was inquiring into the ownership of the vehicle, he smelled marijuana and noticed on the floorboard of the car an envelope marked "supergold," a term commonly associated with marijuana. He asked the four men to step from the car. He patted down each and separated them so that they were no longer in touching distance of each other. He entered the vehicle, found that the envelope contained marijuana, told the four men they were under arrest and read them the Miranda warnings as he searched each of them. He then reentered the car, searched the entire passenger compartment, and found five leather jackets on the back seat, one belonging to respondent Belton. Upon unzipping Belton's jacket he found a small amount of cocaine. Placing the jacket in his automobile, he drove the four arrestees to a nearby police station.<sup>5</sup>

Belton challenged the seizure of the cocaine on the basis that the search had been conducted in violation of his fourth and fourteenth amendment rights.<sup>6</sup> The New York Court of Appeals agreed with Belton, holding that a "warrantless search of the zippered pockets of an inaccessible jacket may not be upheld as a search incident to a lawful arrest where there is no longer any danger that the arrestee or a confederate might gain access to the article."<sup>7</sup>

The Supreme Court reversed, holding that:

When a policeman has made a lawful custodial arrest of the occupant of an automobile, he may as a contemporaneous incident of that arrest, search the passenger compartment of that automobile.

It follows from this conclusion that the police may also examine the contents of any containers found within the passenger compartment, for if

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5. 101 S. Ct. at 2861.

6. *Id.* at 2862. See U.S. CONST. amend. IV (guarantees "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches . . ."); U.S. CONST. amend. XIV (no state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States).

7. 101 S. Ct. at 2862 (quoting 50 N.Y.2d 447, 449, 407 N.E.2d 420, 421, 429 N.Y.S.2d 574, 575, (1980)).

the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach.<sup>8</sup>

This Note will examine the basis for this holding, consider the changes in existing search incident to arrest law and the effects that it will have on other areas of the law.

## II. HISTORY OF THE DOCTRINE

### A. OVERVIEW

The right of law enforcement officers to conduct a warrantless search incident to a lawful arrest was first announced, albeit in dictum, in the early 1900's.<sup>9</sup> For the next twenty odd years, the Court wavered in its definition of the proper scope of such a search.<sup>10</sup>

In 1950, the Court in *United States v. Rabinowitz*<sup>11</sup> upheld a thorough search of defendant's office after his arrest there.<sup>12</sup> The Court reasoned: "The relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable. That criterion in turn depends upon the facts and circumstances—the total atmosphere of the case."<sup>13</sup> *The Rabinowitz* decision, coupled with a previous holding in *Harris v. United States*,<sup>14</sup> stood for the proposition that any area in control or possession of an arrestee at the time of his arrest was subject to a full search.<sup>15</sup>

8. 101 S. Ct. at 2864.

9. *Agnello v. United States*, 269 U.S. 20, 30 (1925) (place and person where the arrest occurs can be searched); *Carroll v. United States*, 267 U.S. 132, 159 (1925) (search of the person and area within his control is permissible); *Weeks v. United States*, 232 U.S. 383, 392 (1914) (dictum) (right to search the person incident to arrest always recognized under English Law).

10. *United States v. Lefkowitz*, 285 U.S. 452 (1931) (refused to allow search when officers had time to obtain a warrant and there was no criminal activity on premises). *Go-Bart Importing Co. v. United States*, 282 U.S. 344 (1931); *Marron v. United States*, 275 U.S. 192 (1927) (person and place where the criminal activity is taking place can be searched).

11. 339 U.S. 56 (1950).

12. *Id.* at 66.

13. *Id.*

14. 331 U.S. 145 (1947). *But see* *Trupiano v. United States*, 334 U.S. 699 (1948), which seemingly overruled *Harris* by requiring agents to obtain a warrant unless there are exigent circumstances.

15. *See* *Chimel v. California*, 395 U.S. 752, 760 (1969).

In 1969, the Court specifically overruled *Harris* and *Rabinowitz* in *Chimel v. California*.<sup>16</sup> *Chimel* involved the warrantless search of defendant's home, incident to his arrest there.<sup>17</sup> The Court noted that "no consideration relevant to the fourth amendment suggests any point of rational limitation, once the search is allowed to go beyond the area from which the person arrested might obtain weapons or evidentiary items."<sup>18</sup> The Court then enunciated standards that would limit unreasonably broad searches: "There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence."<sup>19</sup>

The *Chimel* decision was based in part on *Terry v. Ohio*.<sup>20</sup> In *Terry* an officer stopped and frisked defendants upon a reasonable belief that they were "casing" a store and thus were possibly armed and dangerous.<sup>21</sup> In upholding the search, the Court held that the stop and frisk was a justifiable intrusion under the fourth amendment.<sup>22</sup> But the Court stated in no uncertain terms that "the scope of [a] search must be 'strictly tied to and justified by' the circumstances which rendered its initiation possible."<sup>23</sup>

The Court in *Chimel* stated that a similar analysis should govern the search incident to arrest doctrine.<sup>24</sup> Thus the Court in *Chimel* held that the search of defendant's entire home for a past offense could not be justified without a warrant merely because he was arrested there.<sup>25</sup> The possibility of law officers engaging in "timed" searches without probable cause is simply too great.<sup>26</sup>

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16. 395 U.S. 752, 768 (1969).

17. *Id.* at 753-55.

18. *Id.* at 766.

19. *Id.* at 763.

20. 392 U.S. 1 (1968).

21. *Id.* at 6.

22. *Id.* at 30.

23. *Id.* at 19 (quoting *Warden v. Hayden*, 387 U.S. 294, 310 (1967)).

24. 395 U.S. at 762.

25. *Id.* at 767.

26. *Id.*

Finally, the *Chimel* Court stated that the search must be contemporaneous with the arrest "for these justifications [of obtaining destructible evidence and weapons] are absent where the search is remote in either time or place."<sup>27</sup>

## B. SEARCH OF THE PERSON DISTINGUISHED

In 1974 the Court decided *United States v. Robinson*<sup>28</sup> and its companion case *Gustafson v. Florida*,<sup>29</sup> holding that a law officer may conduct a full search of the arrestee's person incident to arrest for the commission of a traffic offense.<sup>30</sup>

In these decisions the Court went to great lengths to distinguish *Terry*-type stops from custodial arrests.<sup>31</sup> Custodial arrests, reasoned the Court, are far more dangerous to the officer's safety because of the extended contact between the arrestee and the officer.<sup>32</sup> Thus, when there is an arrest, no matter what the circumstances, the arrestee may immediately be "searched."<sup>33</sup>

As Justice Rehnquist reasoned for the plurality in *Robinson*, "[a] custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification."<sup>34</sup> *Robinson* and *Gustafson* did not in fact overrule *Chimel*,<sup>35</sup> but foreclosed the possibility that an arrest search, at least as far as a person is concerned, will be based on the circumstances of each arrest.<sup>36</sup>

In formulating its decision in *Robinson*, the Court stated that a search incident to arrest is a traditional exception to the

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27. *Id.* at 764 (quoting *Preston v. United States*, 376 U.S. 364, 367 (1963)) (search of a car more than a week after the arrest procedure ended is not a search incident to arrest).

28. 414 U.S. 218 (1973).

29. 414 U.S. 260 (1973).

30. *United States v. Robinson*, 414 U.S. at 235; *United States v. Gustafson*, 414 U.S. at 266.

31. *United States v. Robinson*, 414 U.S. at 233; *United States v. Gustafson*, 414 U.S. at 263.

32. *United States v. Robinson*, 414 U.S. at 235.

33. *Id.*

34. *Id.*

35. *Id.* at 226.

36. *Id.*

warrant requirement.<sup>37</sup> This general exception contains two distinct propositions: the search of the person, and the search of the area involved.<sup>38</sup> The Court stated that “[t]he validity of the search of a person incident to a lawful arrest has been regarded as settled from its first enunciation,”<sup>39</sup> but that area searches, “[w]hile likewise conceded in principle, [have] been subject to differing interpretations as to the extent of the area which may be searched.”<sup>40</sup>

Since these cases dealt with the actual search of a person incident to arrest, it was an open question whether an automatic right to search the area where an arrest occurred proceeded from every arrest or whether the circumstances involved in the arrest would govern the extent of the search. The Court in *Robinson* expressed its decision to avoid confusion in areas where the police must make quick “ad hoc judgments.”<sup>41</sup> Still the question had not been definitively answered because the Court had taken care to distinguish the search of a person from that of the area in which the arrest takes place.

### III. BELTON

It is with this background that the Court decided *Belton*. In *Belton* the Court cited *Chimel* as providing the basic foundation that a limited warrantless search of the area may be undertaken when there is a legal arrest.<sup>42</sup>

The Court reasoned that “[a]lthough the principle that limits a search incident to a lawful custodial arrest may be stated clearly enough, courts have discovered the principle difficult to apply in specific cases.”<sup>43</sup> As in *Robinson*, the Court felt the need for a single straight forward rule because “[w]hen a person cannot know how a court will apply a settled principle to a recurring factual situation, that person cannot know the scope of

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37. *Id.* at 224.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.* at 235.

42. 101 S. Ct. at 2864 n.3. The Court stated: “Our holding . . . does no more than determine the meaning of *Chimel*’s principles in this particular and problematic content. It in no way alters the fundamental principles established in the *Chimel* case regarding the basic scope of searches incident to lawful custodial arrests.” *Id.*

43. *Id.* at 2863.

his constitution protectional, nor can a policeman know the scope of his authority."<sup>44</sup>

#### A. EXTENSION OF THE "IMMEDIATE REACH" DOCTRINE

Although the plurality opinion in *Belton* purports to leave the *Chimel* search incident to arrest doctrine intact, it is not clear that the Court has done so. The searchable area as defined by *Chimel*'s "immediate reach" doctrine is based on two principle concerns: (1) an arrestee presents a possible danger to the arresting officer and thus she and the area within her reach should be immediately searched for weapons;<sup>45</sup> (2) concealed and destructible evidence on the arrestee and within her reach should be obtained before they are lost.<sup>46</sup>

Under *Chimel*, the question should be: Can the arrestee reach into a concealed area for a weapon or destructible evidence, not: Could the arrestee have reached for a weapon or destroyed evidence? The test is designed to prevent certain actions at the time of arrest; not to legitimize searches because of speculative actions that could have taken place earlier when the searched area was under the defendant's control.<sup>47</sup> If the arresting officer for some reason cannot secure the arrestee or move her to an area the officer knows to be free of weapons or evidence, the officer should be allowed to search the area where the arrestee is to be placed. But once an officer secures or removes the arrestee, the now inaccessible area should not become the subject of a warrantless search.

By ignoring the reasoning underlying the *Chimel* decision, the Court in *Belton* has extended the *Robinson* "automatic search"<sup>48</sup> doctrine to area searches. In *Robinson* the Court had reasoned that weapons obtainable from the person of an arrestee presented a danger to the arresting officer throughout the arrest procedure.<sup>49</sup> This may not be the case in many vehicle searches.

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44. *Id.* at 2864. In reaching this conclusion the Court examined some inconsistent results among the circuits. *Id.* at 2863.

45. *Chimel v. California*, 395 U.S. at 763.

46. *Id.*

47. See W. LAFAVE, SEARCH AND SEIZURE, A TREATISE ON THE FOURTH AMENDMENT § 7.1, at 501 (1978). See also *New York v. Belton*, 101 S. Ct. at 2864.

48. 414 U.S. at 235.

49. *Id.*



When an arrestee no longer has access to the interior of the vehicle, as was the situation in *Belton*,<sup>50</sup> there no longer exist the justifications relied on in *Robinson* for an "automatic" warrantless search.

Nor does the Court in *Belton* give any indication of the length of time that will be allowed to pass before police intrusion, into the area from which the arrestee has been removed, will be termed unreasonable.<sup>51</sup> The Court in *Chimel* had stated that the justifications for a search contemporaneous with an arrest cease to exist if the search is remote in either time or place from the arrest.<sup>52</sup>

*Belton* is not the first case to misapply the search incident to arrest doctrine.<sup>53</sup> Some lower courts have credited the arrestee with extraordinary "reaching" abilities.<sup>54</sup> Others have erroneously taken into account the mobility of the vehicle from which the arrestee has been removed.<sup>55</sup> If the *Belton* decision is limited to car searches as the plurality suggests, then the fact that public arrests and automobile searches traditionally have been viewed as less intrusive invasions of privacy may help explain the holding in *Belton*.<sup>56</sup> But, with the Court's abandon-

50. 101 S. Ct. at 2867. In his dissent, Justice Brennan noted that when Trooper Nicot searched Belton's jacket there was no longer any present danger that either Belton or a confederate might gain access to the vehicle in which the jacket was located.

51. In *United States v. Edwards*, 415 U.S. 800 (1974), the Court upheld the warrantless search and seizure of an arrestee's clothing 10 hours after the initial arrest. The Court stated that the search "was and is a normal incident of a custodial arrest, and reasonable delay in effectuating it does not change the fact that Edwards was no more imposed upon than he could have been at the time and place of the arrest or immediately upon arrival at the place of detention." *Id.* at 805. Query whether this rationale will now be applied to car searches.

52. 395 U.S. at 764.

53. See *United States v. Dixon*, 558 F.2d 919, 922 (9th Cir. 1977) (upholding the search of a bag on car floorboard after arrestee was removed). See also *United States v. Gonzales-Rodriguez*, 513 F.2d 928, 931 (9th Cir. 1975).

54. See *United States v. Frick*, 490 F.2d 666, 673 (5th Cir. 1973) (arrestee would have needed the skill of Houdini and strength of Hercules to reach the contents of the briefcase) (Goldberg, J., dissenting).

55. See *United States v. Mehciz*, 437 F.2d 145 (9th Cir.), *cert. denied*, 402 U.S. 974 (1971).

56. See 101 S. Ct. at 2864 (police may, as a contemporaneous incident of a lawful custodial arrest, search the passenger compartment). See *United States v. Watson*, 423 U.S. 411, 414-424 (1976) (warrant not required for public arrest, based on probable cause); *Carroll v. United States*, 267 U.S. 132 (1925) ("automobile exception" first stated). See also *Chambers v. Maroney*, 399 U.S. 42 (1970). (Where probable cause to search a car exists, there is no difference between, on the one hand, seizing and holding

ment of the "immediate reach" doctrine, the justifications for the search cease and lesser expectations of privacy alone cannot justify an otherwise unreasonable search.

The *Belton* decision allows officers to invade a person's car on the mere speculation that there will be evidence of illegal activity within. The expansion of the search incident to arrest doctrine in this manner is in violation of the fourth amendment, which requires that warrantless searches be based on reasonable beliefs not speculations.

#### B. CONTAINERS: CASES IN CONFLICT

In two recent Supreme Court cases, *United States v. Chadwick*,<sup>57</sup> and *Arkansas v. Sanders*,<sup>58</sup> the Court indicated that simply because persons were arrested, containers reduced to the control of the arresting officers were not automatically subject to search.<sup>59</sup>

Since the rule announced in *Belton* allows the police to automatically search all the containers within the interior of the car,<sup>60</sup> it is necessary to examine these three cases in conjunction with one another.

In *Chadwick*, the defendants were arrested while standing next to an open automobile trunk. The subjects had placed a double-locked footlocker, that agents believed contained marijuana, in the trunk.<sup>61</sup> The agents arrested the men with the footlocker, transported them and the footlocker to the federal building and then searched the footlocker without a warrant.<sup>62</sup> The Court, in rejecting the government's contention that the search could be justified as a lawful search incident to arrest, stated two reasons: first, because the search was not contemporaneous with the arrest<sup>63</sup> (the search occurred at least an hour after the initial seizure) and second, because the locker was no longer in

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the car before presenting the probable cause issue to magistrate and, on the other hand, carrying out an immediate search without a warrant.).

57. 433 U.S. 1 (1977).

58. 442 U.S. 753 (1979).

59. *Arkansas v. Sanders*, 442 U.S. at 757; *United States v. Chadwick*, 433 U.S. at 13.

60. 101 S. Ct. at 2864.

61. 433 U.S. at 4.

62. *Id.*

63. *Id.* at 15.

control of the arrestees.<sup>64</sup> The Court reasoned, “[o]nce 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 that arrest.”<sup>65</sup>

The Court in *Chadwick* refused to extend the *Robinson* approach to containers within the arrestee’s control. The Court, in a footnote, noted the difference: “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.”<sup>66</sup>

It may be argued that the coat seized in *Belton* was property immediately associated with the person and thus subject to a reduced expectation of privacy.<sup>67</sup> But the Court in *Belton* refused to make the distinction that different types of containers are subject to different levels and expectations of privacy.<sup>68</sup>

In fact, in a case that was decided at the same time as *Belton*, *Robbins v. California*,<sup>69</sup> the court expressly refused to accept the proposition that “the nature of a container may diminish the constitutional protection to which it otherwise would be entitled . . . .”<sup>70</sup> The *Robbins* Court went on to state that “[the fourth amendment] protects people and their effects, and it protects those effects whether they are ‘personal’ or ‘impersonal.’”<sup>71</sup>

64. *Id.*

65. *Id.* at 15. See also *Preston v. United States*, 376 U.S. 364 (1963). *People v. Robles*, 125 Cal. App. 3d 887, 178 Cal. Rptr. 439 (1981) recognized that article 1, section 13 of the California Constitution, as interpreted by the California Supreme Court, may provide greater protection than afforded by parallel provisions of the United States Constitution. Therefore, “once the container is reduced to the exclusive control of law enforcement, generally no exigency exists, justifying the warrantless search.” *Id.* at 893, 178 Cal. Rptr. 443-44.

66. 433 U.S. at 16 n.10.

67. *W. LAFAVE*, *supra* note 47, at § 5.5, at 355.

68. 101 S. Ct. at 2864.

69. 101 S. Ct. 2841 (1981) (warrantless search and seizure of two packages containing marijuana from an arrestee’s car trunk).

70. *Id.* at 2845.

71. *Id.* at 2846.

Thus, if the containers are not the distinguishing factor between *Chadwick* and *Belton*, then the movement of the footlocker from the scene must have activated the warrant requirement imposed by the Court in *Chadwick*. But certainly if this were the case, then what the Court is saying is a valid protectable interest in *Chadwick* can easily be circumvented by the police if only they act quickly and open all containers at the scene of the arrest.<sup>72</sup>

The *Sanders* case is also instructive on the inconsistencies that now exist in warrantless search law as a result of *Belton*. In *Sanders*, officers acting on an informant's tip that the defendant would be arriving at the airport with a green suitcase containing marijuana, placed the airport under surveillance.<sup>73</sup> When the defendant arrived, he retrieved a green suitcase from the baggage claim area and placed the case in the trunk of a taxi cab.<sup>74</sup> The police stopped the cab, and, without asking respondent for permission or first obtaining a warrant, retrieved and searched the suitcase.

Applying the rules of the automobile exception, the Court held that even though the police had probable cause to believe the suitcase contained marijuana, they could not conduct a search absent exigent circumstances.<sup>75</sup> In *Sanders* the Court reasoned that once the suitcase was reduced to the exclusive control of the police, no exigent circumstances existed.<sup>76</sup> In *Belton*, the jacket was within the trooper's control and remained so until he delivered the men and the jacket to the police station, but the Court allowed the trooper to search the jacket in the field.<sup>77</sup>

The discrepancy that now exists between the automobile and search incident to arrest exceptions to the warrant requirement is irreconcilable.<sup>78</sup> In *Belton* and *Sanders* the "containers"

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72. See *United States v. Cleary*, 656 F.2d 1302 (9th Cir. 1981). In *Cleary*, the officer's spot search of a tote bag at the scene was not thorough enough to discover all the evidence. Evidence recovered after a thorough warrantless search at the station house was suppressed.

73. 442 U.S. at 755.

74. *Id.*

75. *Id.* at 765.

76. *Id.* at 763.

77. 101 S. Ct. at 2864.

78. See *Arkansas v. Sanders*, 442 U.S. 753, 771 (1979) (Blackmun, J., dissenting). Justice Blackmun's dissent in *Sanders* envisioned the discrepancy that now exists between the two doctrines.

were both under the exclusive control of the officers.<sup>79</sup> In *Sanders*, however, the officers had reason to believe the suitcase contained evidence, yet they were not allowed to search; in *Belton*, the trooper had no idea that the jacket contained cocaine, but the search was allowed.

### C. CASE BY CASE ANALYSIS

The avoidance of a case-by-case analysis involving exceptions to the fourth amendment warrant requirement is a relatively new concept.<sup>80</sup> The impact is that there is no longer a need or incentive for police to obtain search warrants. The preference for search warrants was expressed in many of the Court's earlier decisions because it was felt that absent some exigent circumstances, the fourth amendment required that a neutral magistrate be interposed between the citizen and the police.<sup>81</sup> The Court provided an incentive for the police to obtain warrants by applying a subtle difference between the probable cause required in warrant and warrantless searches.<sup>82</sup> As the Court stated in *United States v. Ventresca*,<sup>83</sup> "in a doubtful or marginal case a search under a warrant may be sustainable where without one it would fall."<sup>84</sup>

Commentators in the past have believed that the search incident to arrest doctrine is one exception that comes close to swallowing up the warrant requirement.<sup>85</sup> With the Court's new bright line rule, this is particularly true. The possibility of using an arrest for a minor traffic violation as a subterfuge for extensive intrusion into those areas protected by the fourth amendment is too great to leave the problem for another day as *Robin-*

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79. See *New York v. Belton*, 101 S. Ct. at 2860; *Arkansas v. Sanders*, 442 U.S. at 755.

80. See *United States v. Robinson*, 414 U.S. 218 (1973); *Gustafson v. Florida*, 414 U.S. 260 (1973).

81. See *McDonald v. United States*, 335 U.S. 451 (1948).

82. Y. KAMISAR, W. LAFAVE & J. ISRAEL, *MODERN CRIMINAL PROCEDURE* 269 (5th ed. 1980).

83. 380 U.S. 102 (1965).

84. *Id.* at 106.

85. L. TIFFANY, D. MCINTYRE & D. ROTENBURG, *DETECTION OF CRIME* 105, 122 (F. Remington ed., 1967); Aaronson & Wallace, *A Reconsideration of the Fourth Amendment's Doctrine of Search Incident to Arrest*, 64 *GEO. L.J.* 53, 54 (1975).

*son*<sup>86</sup> and now *Belton* have done. This possibility has been the major criticism of the Courts new "rules."<sup>87</sup> As the dissent in *Belton* points out, "the mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment."<sup>88</sup>

To give the officer the right to search the person of an arrestee and then to extend that right to search automatically the area around the arrestee, gives the police more power than existed during the days of the *Harris-Rabinowitz* rule. Even then the search had to be justified by the total composition of the case.<sup>89</sup> The rights guaranteed under the fourth amendment only become meaningful if, at some point, those charged with enforcing the laws are subject to check by a detached magistrate.

#### IV. CONCLUSION

The Court's departure from the sound reasoning expressed in *Chimel* points the arrest search and seizure law back in the direction of *Harris* and *Rabinowitz*. The *Belton* decision, as with these previous expansions of searches incident to arrest, lacks any justifiable basis on which to stand. The inconsistencies that exist with this decision and other areas of law involving warrant exceptions are the result of the Court's unsound reasoning in *Belton*.

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86. 414 U.S. at 221 n.1.

87. Note, *Warrantless Searches and Seizures of Automobiles*, 87 HARV. L. REV. 835 (1974); Note, *Restricting the Scope of Searches Incident to Arrest: United States v. Robinson*, 59 VA. L. REV. 724 (1973).

88. 101 S. Ct. at 2869 (citing *Mincey v. Arizona*, 437 U.S. 385, 393 (1977)).

89. *United States v. Rabinowitz*, 339 U.S. 56, 66 (1950).