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***New York v. Belton*: The Scope of Warrantless Searches Extended**

The United States Supreme Court, in New York v. Belton, expanded the area in which a policeman may search after he has made a lawful custodial arrest. In so ruling, the Supreme Court dramatically departed from its previous holding in Chimel v. California. While Chimel limited the area of the search to the area "within the immediate control of the arrestee," Belton allowed a search outside of that established boundary, as the Supreme Court allowed the search to include the passenger compartment of an automobile which the arrestee had not occupied.

I. INTRODUCTION

The United States Supreme Court, in *New York v. Belton*,¹ was called upon once again to determine the permissible scope of a warrantless search.² In a dramatic departure from its previous decisions, the Court held 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."³ This is so despite the fact that

1. 101 S. Ct. 2860 (1981), *reh. denied*, 102 S. Ct. 26 (1981).

2. See *Chimel v. California*, 395 U.S. 752 (1969) (a warrantless search of the defendant's entire house was held unreasonable as extending beyond the area from which the defendant might have obtained a weapon or destroyed evidence); *United States v. Rabinowitz*, 339 U.S. 56 (1950) (a warrantless search of the defendant's one-room office pursuant to a valid arrest was held not unreasonable, notwithstanding the officers having had time to obtain a search warrant prior to the arrest and search); *Trupiano v. United States*, 334 U.S. 699 (1948) (where there was ample opportunity to obtain a warrant before searching the premises, a search and seizure without a warrant was unreasonable even though a custodial arrest occurred); *Marron v. United States*, 275 U.S. 192 (1927) (a warrantless search and seizure of account books and papers as an incident to an arrest was valid where the items seized were in the immediate possession and control of the person arrested); *Carroll v. United States*, 267 U.S. 132 (1925) (a warrantless search of an automobile for contraband liquor was upheld where officers had probable cause for suspecting its presence). There are many categories of warrantless searches; e.g., consent searches, searches pursuant to a custodial arrest, a stop and frisk, auto searches (of an impounded vehicle and pursuant to an arrest), and searches conducted incident to an arrest involving hot pursuit. There will be a detailed discussion of warrantless searches in the historical background section of this note. See notes 25-31 and accompanying text *infra*.

3. 101 S. Ct. at 2864. The Court stated that it was applying the principles of *Chimel* to *Belton*. See note 50 *infra*. The Court emphasized that *Chimel's* principles were not being altered in any way. Despite Justice Stewart's assertion that *Belton* "in no way alters the fundamental principles established in the *Chimel*

the arrestee is no longer an occupant of the automobile nor able to gain access to that interior.

Chimel v. California,⁴ decided by the Court in 1969, established that an officer may conduct a warrantless search of the area "within the immediate control" of the arrestee.⁵ The underlying rationale of this ruling was that any area within the arrestee's "immediate control" was well within the arrestee's reach and that the arrestee could therefore extend into that area to destroy evidence or obtain a weapon. Justice Stewart, writing for the majority in *New York v. Belton*,⁶ claimed to have relied upon *Chimel*. As will be discussed herein, Justice Stewart's reliance was misplaced as *Chimel* set "temporal and spatial" limitations⁷ on searches incident to an arrest. This point was emphasized by Justice Brennan in his dissent,⁸ who noted that the arrestee in *New York v. Belton* was standing outside the vehicle while the search was conducted and had no access to the automobile interior. Brennan argued that not only was Justice Stewart's reliance on *Chimel* misplaced, but also that the search inside the car was not within the limits of *Chimel*.

The Court's decision in *New York v. Belton* is significant in that it allowed the warrantless search of an area in total abrogation of the principles established in *Chimel*.⁹ Such a radical departure from *Chimel's* principles makes it doubtful that *Chimel* will continue to be viable in the law of warrantless searches. Furthermore, the clarity *Chimel* propagated in this area of criminal procedure law has now been muddied by the decision in *New York v. Belton*.

This casenote will present the facts of *Belton* and trace the development of warrantless searches. The author will analyze the basis of the Supreme Court's decision, indicating the extent to which the decision departs from previous holdings. In addition, this paper will examine the significance of the *Belton* decision as it relates to cases which will be decided in the future.

case" 101 S. Ct. at 2864, n.3, the author will show in this casenote that the opposite is true. *Chimel's* principles will be discussed in the historical background section of this note. See notes 46-52 and accompanying text *infra*.

4. 395 U.S. 752 (1969).

5. *Id.* at 763. The Court pointed out that the area within an arrestee's "immediate control" meant the area from which the arrestee "might gain possession of a weapon or destructible evidence." *Id.*

6. Justice Stewart was joined by the Chief Justice, Justice Blackmun, and Justice Powell. Justice Rehnquist and Justice Stevens wrote separate concurring opinions.

7. 101 S. Ct. at 2867 (Brennan, J., dissenting).

8. *Id.* Justice Marshall joined Justice Brennan in the dissent. Justice White, wrote a separate dissenting opinion joined by Justice Marshall.

9. See note 50 *infra* and accompanying text.

II. FACTUAL BACKGROUND OF *NEW YORK V. BELTON*

On April 9, 1978, the defendant and three companions were traveling on the New York State Thruway when their car was stopped by a state trooper for speeding. As the officer scrutinized the vehicle and its occupants, he smelled the odor of marijuana. Glancing inside the vehicle, the officer observed an envelope marked "Supergold" on the floor of the vehicle which he recognized to be the type commonly used to hold marijuana.¹⁰

The occupants were told to get out of the vehicle and placed under arrest. After giving the occupants a *Miranda* warning,¹¹ the officer searched each of them. The officer then proceeded to search the passenger compartment of the car. Finding a black leather jacket on the back seat, he opened a zippered pocket and discovered a small amount of cocaine.¹²

Following a denial of a motion to suppress the cocaine as illegally seized evidence, the defendant pleaded guilty to attempted possession of a criminal substance in the sixth degree.¹³ A unanimous Appellate Division of the New York Supreme Court affirmed the trial court's holding that the warrantless search of the jacket was lawful as incident to the defendant's arrest for possession of marijuana.¹⁴

The New York Court of Appeals reversed, holding that where there is no danger of destruction of the evidence, a warrantless search incident to a lawful arrest cannot be upheld.¹⁵

10. 101 S. Ct. at 2861-62.

11. When an individual is taken into custody, a *Miranda* warning informs the individual that prior to any questioning:

he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

Miranda v. Arizona, 384 U.S. 436, 479 (1966).

12. 101 S. Ct. at 2862.

13. *People v. Belton*, 68 A.D.2d 198, 199 (N.Y. 1979). N.Y. PENAL LAW § 220.05 (McKinney 1980) states that "[a] person is guilty of criminal possession of a controlled substance in the sixth degree when he knowingly and unlawfully possesses one hundred or more but less than five hundred milligrams of undiluted phencyclidine."

14. 68 A.D.2d at 201. The court stated that "[O]nce [the] defendant was validly arrested for possession of marihuana, the officer was justified in searching the immediate area for other contraband." *Id.* The court pointed out that an officer could search the personal effects of the arrestee that are "ready to hand." In light of this, the court held that the search of the defendant's jacket was reasonable in "scope, intensity and duration." *Id.*

15. *People v. Belton*, 50 N.Y.2d 447, 429 N.Y.S.2d 574, 407 N.E.2d 420 (1980). The

III. HISTORICAL BACKGROUND OF SEARCHES

A search has been defined as:

some exploratory investigation, or an invasion and quest, a looking for or seeking out. The quest may be secret, intrusive, or accomplished by force, and it has been held that a search implies some sort of force, either actual or constructive, much or little. A search implies a prying into hidden places for that which is concealed and that the object searched for has been hidden or intentionally put out of the way¹⁶

That a search has been interpreted broadly is evidenced by the Supreme Court's decision in *Katz v. United States*.¹⁷ In *Katz*, the Court found that the government's activities in wiretapping a public telephone booth and listening to and recording the defendant's words spoken into a telephone receiver constituted a "search."¹⁸ In *Belton*, the officer's examination of the interior of the automobile and search through the pockets of the defendant's jacket constituted a classic example of a "search."¹⁹

A. A Search Warrant and the Purpose Served by its Issuance

Generally, no search can be conducted without a warrant.²⁰ "A search warrant is an order in writing, in the name of the state, signed by a magistrate and directed to a peace officer, commanding him to search for personal property and bring it before the magistrate" ²¹

An important purpose served by requiring a search warrant is that it "interposes an orderly procedure' involving 'judicial impartiality' whereby a 'neutral and detached magistrate' can make 'informed and deliberate determinations' on the issue of probable

court emphasized that the defendant was under arrest and outside of the automobile. The automobile "was in a secure place where it could have been easily guarded" while a search warrant was obtained. *Id.* at 452.

16. 1 W. LaFare, SEARCH AND SEIZURE 222 (1978) (quoting C.J.S., *Searches and Seizures* § 1 (1952)).

17. 389 U.S. 347 (1967). The Court emphasized that "[w]herever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures." *Id.* at 359.

18. *Id.* at 353. In holding that the government's activities constituted a search, the Court specifically overruled the "trespass" doctrine which was established in *Olmstead v. United States*, 277 U.S. 438 (1928).

19. This is so because the officer was involved in an exploratory investigation. The officer smelled the odor of marijuana and saw the envelope marked "Supergold." He was thus prying into hidden places where marijuana might be concealed. This is the essence of a search. *See* note 16 *supra* and accompanying text.

20. In *Trupiano v. United States*, 334 U.S. 699 (1948), the Court stressed the importance of obtaining a search warrant by saying, "[i]t is a cardinal rule that, in seizing goods and articles, law enforcement agents must secure and use search warrants wherever reasonably practicable." *Id.* at 705.

21. *Allen v. Holbrook*, 103 Utah 319, 331, 135 P.2d 242, 247-48 (1943).

cause."²² If a peace officer was himself allowed to determine whether probable cause to search existed, there would inevitably be many abuses. An officer might abuse such discretion in searching because of bias or prejudice directed toward the victim of the search.²³ The officer might also be caught up in the heat of the action and be forced to make hurried and unjustified decisions. Under these conditions, the mandates of the fourth amendment are not likely to be followed.²⁴

B. Warrantless Searches

One exception to the warrant requirement is a search conducted pursuant to voluntary consent.²⁵ The rationale for allowing a warrantless search when consent is voluntarily given is that an individual can willingly waive his right of requiring a warrant.²⁶ Another exception to the warrant requirement was estab-

22. 2 W. LaFave, *SEARCH AND SEIZURE* 29 (1978) (quoting *United States v. Jeffers*, 342 U.S. 48 (1951)). Justice Clark, in *Jeffers*, stated that interposing a detached and neutral magistrate to determine whether probable cause to search exists is necessary to attain the "beneficent purposes intended" by the fourth amendment. *Id.* at 51.

In *Johnson v. United States*, 333 U.S. 10 (1948), police officers conducted a warrantless search of a room from which emanated the odor of opium. In holding the search invalid, the Court stated that "[w]hen the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or Government enforcement agent." *Id.* at 14.

The preference for search warrants when conducting searches was emphasized by the Court in *Aguilar v. Texas*, 378 U.S. 108 (1964) where it stated that "the informed and deliberate determinations of magistrates empowered to issue warrants . . . are to be preferred over the hurried action of officers . . . who may happen to make arrests." *Id.* at 110-11 (quoting *United States v. Lefkowitz*, 285 U.S. 452, 464 (1932)).

23. The fourth amendment was designed to protect against the abuses of general warrants and searches that had alienated the colonists of early America. *Chimel v. California*, 395 U.S. at 761. The general warrant empowered the officer to search at his will wherever he expected smuggled goods to be, and to break open any container and package that he suspected contained smuggled goods. N. Lason, *THE HISTORY AND DEVELOPMENT OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION*, 53-54 (1937). Similar abuses would no doubt occur if an officer was allowed to determine for himself whether probable cause to search existed.

24. See note 22 *supra* and accompanying text..

25. *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973). The consent to search cannot be obtained by any means of fraud or similar conduct. In *Bumper v. North Carolina*, 391 U.S. 543 (1968), the Court held that obtaining consent to search by a claim of authority is no consent at all. A police officer conducting the search asserted that he possessed a search warrant and based on this information the homeowner consented to a search.

26. The consent must be voluntary. Voluntariness is a question of fact which

lished in *Terry v. Ohio*,²⁷ where the Court stated that a police officer may conduct "a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime."²⁸ Likewise, search warrants are not required when 1) police are in hot pursuit of an offender;²⁹ 2) when police search an automobile suspected of carrying illegal material while the vehicle is stopped on the highway and the driver or occupants have not yet been placed under arrest;³⁰ and 3) when police search an individual who has been lawfully arrested.³¹

must be determined from the totality of the surrounding circumstances. *Schneckloth v. Bustamonte*, 412 U.S. at 227. Knowledge of the right to refuse consent is a factor to be considered in the determination of voluntariness; but it is not, standing alone, conclusive to the determination. *Id.*

27. 392 U.S. 1 (1968). An officer observed three men who appeared to be "casing" a store for a robbery, and approached them for questioning. The officer then frisked them, finding weapons on two of the men. The officer testified that he only patted the men down and did not put his hands under any outer clothing until he felt their guns.

28. *Id.* at 27.

29. *Warden v. Hayden*, 387 U.S. 294 (1967). In *Warden*, police were informed that an armed robbery had taken place and that the suspect had entered a certain house five minutes before they reached it. The Court upheld the warrantless search of the house because delay would endanger the lives of police and others. Speed was "essential" to insure that police had control of all weapons which could be used against them. *Id.* at 299.

30. In *Carroll v. United States*, 267 U.S. 132 (1925), the United States Supreme Court upheld the admissibility into evidence of contraband liquor seized in a warrantless search of a car on the highway. The Court determined that since a vehicle can be quickly moved out of a jurisdiction, it may be searched without a warrant if the officer has probable cause to believe it contains contraband. *Id.* at 153. The question remaining after the *Carroll* decision was whether *Carroll* could be relied upon to justify a warrantless search of the car after the arrest of the driver. One court answered in the negative, stating that "[e]xigencies do not exist when the vehicle and the suspect are both in police custody." *Ramon v. Cupp*, 423 F.2d 248, 249 (9th Cir. 1970).

In *Chambers v. Maroney*, 399 U.S. 42 (1970), the United States Supreme Court came to a contrary conclusion. In *Chambers*, police stopped a car that fit the description of one that was used in the robbery of a service station. The occupants were arrested and the car was driven to a police station. The police conducted a warrantless search of the car at the station and found incriminating evidence. While upholding the validity of the search, Justice White, speaking for the majority, stated: "For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant." *Id.* at 52. Justice White believed that if probable cause to search existed, then either course would be reasonable under the fourth amendment. *Id.*

31. In *Weeks v. United States*, 232 U.S. 383 (1914), the Court stated that the right to search a person who is legally arrested in order to uncover evidence of a crime has been uniformly maintained in many cases. *Id.*

The statement by the Court in *Weeks* only dealt with a warrantless search of a "person;" it made no mention of a warrantless search of the "place" where an arrest occurs. *Id.*

C. *Searches Incident to a Lawful Arrest: Areas Within the Control of the Arrestee*

In *Carroll v. United States*,³² decided in 1925, the Supreme Court stated that "[w]hen a man is legally arrested for an offense, whatever is found upon his person or in his control which it is unlawful for him to have and which may be used to prove the offense may be seized and held as evidence in the prosecution."³³ In just over seven months after the *Carroll* decision, the Supreme Court in *Agnello v. United States*,³⁴ in dictum, stated that an officer could conduct a warrantless search of the "place" where the arrest is made.³⁵

In *Harris v. United States*,³⁶ officers obtained a warrant for Harris' arrest. After arresting Harris at his apartment, the officers, who did not have a search warrant, conducted an extensive search of the apartment and found incriminating evidence. The Court upheld the search, stating that "[s]earch and seizure incident to a lawful arrest is a practice of ancient origin. . . ."³⁷

32. 267 U.S. 132 (1925). See *supra* note 30. The defendants were arrested by government agents for transporting intoxicating liquor in an automobile in violation of the National Prohibition Act. The automobile was searched without a warrant. The conviction of the defendants was affirmed. *Id.* at 134-36.

33. *Id.* at 158. Section 26 of the National Prohibition Law provided that when an officer discovered a person transporting liquor, the officer could seize the liquor and arrest the person in charge. *Id.* at 139.

34. 269 U.S. 20 (1925). Government agents arrested the defendants at one Alba's house and seized cocaine they discovered on the premises. The agents then went to Agnello's home which was several blocks away and conducted a search without a warrant and again discovered cocaine. The Court held that the search of Agnello's house and subsequent seizure of cocaine violated the fourth amendment. *Id.* at 33. The search of Agnello's house was not a search incident to an arrest. *Id.* at 31.

35. The Court said that "[t]he right without a search warrant . . . to search the place where an arrest is made . . . is not to be doubted." *Id.* at 30. In *Agnello*, "place" meant the immediate area where the defendants were arrested. *Id.* at 29.

36. 331 U.S. 145 (1947). The warrant for Harris' arrest was based on an alleged violation of the Mail Fraud Statute. A second warrant charged Harris with intent to defraud banks. Five agents of the Federal Bureau of Investigation went to Harris' apartment and arrested him, seeking two cancelled checks. Inside a desk drawer, one agent found a sealed envelope marked "George Harris, personal papers." These were used to secure Harris' conviction for violating the Selective Training and Service Act of 1940. *Id.*

37. *Id.* at 150. The *Harris* decision expanded the scope of a warrantless search as enunciated in *Agnello*. *Agnello* held that officers could search the "place" where an arrest occurs, that meaning the immediate area of the arrest. See note 35 *supra*. In *Harris*, the Court upheld the search of a four-room apartment pursuant to an arrest. This was a definite expansion of the scope of a warrantless search.

One year after the *Harris* decision, the Supreme Court took a stricter approach to warrantless searches incident to arrest. In *Trupiano v. United States*,³⁸ government agents conducted a raid on an illegal distillery which had been under surveillance for some time. The *Trupiano* decision upheld the warrantless arrest of one of the defendants operating the still, based on the theory that the defendant was committing a felony in the presence of a government agent.³⁹ The seizure of the illicit distillery, however, was invalidated because the Court believed that law enforcement agents must secure and use search warrants whenever reasonably practicable.⁴⁰ The Court went on to state that in order to search without a warrant, "there must be something more in the way of necessity than merely a lawful arrest."⁴¹ To conduct a warrantless search pursuant to a lawful arrest, there must be a factor which "would make it unreasonable or impracticable to require the arresting officer to equip himself with a search warrant."⁴²

In *United States v. Rabinowitz*, a case which overruled *Trupiano* to the extent that it mandated other warrantless search criteria besides "reasonableness" pursuant to a lawful arrest,⁴³ federal authorities had been informed that the defendant was dealing in stamps bearing forged overprints. Armed with an arrest warrant, government authorities went to the defendant's place of business, a one-room office open to the public. After arresting the defendant, the officers extensively searched the desk, safe, and file cabinets in the office. The agents found and seized 573 stamps with forged overprints. The Court held that the warrantless search of

38. 334 U.S. 699 (1948).

39. *Id.* at 705. The government agents went upon the property where the still was located with the consent of the owner. One of the agents saw a defendant through an open doorway operating the still. *Id.* at 704.

40. *Id.* In *Trupiano*, it would have been reasonably practicable to obtain a search warrant. For almost a month preceding the raid, a government agent worked as a "mash man" for the defendants. It was possible for the agent to supply the information necessary to obtain an effective search warrant. *Id.* at 706.

41. *Id.* at 708. *See also* *McDonald v. United States*, 335 U.S. 451 (1948), where the Court reversed a conviction of racketeering. The Court ruled that the evidence obtained without a search warrant should have been suppressed. Justice Douglas, writing for the majority, stated that "[w]here, as here, officers are not responding to an emergency, there must be compelling reasons to justify the absence of a search warrant." *Id.* at 454.

42. 334 U.S. at 708. *Trupiano* had the effect of severely limiting the scope of warrantless searches established by the *Harris* decision. Under *Trupiano*, the search in *Harris* would not have been permissible since it would have been practicable for the government agents to obtain a search warrant.

43. 339 U.S. 56 (1950). "To the extent that *Trupiano v. United States* . . . requires a search warrant solely upon the basis of the practicability of procuring it rather than upon the reasonableness of the search after a lawful arrest, that case is overruled." *Id.* at 66.

the premises under the control of the person arrested, where the crime was being committed, was not "unreasonable."⁴⁴ The Court went on to state that the validity of a warrantless search depends upon "the reasonableness under all the circumstances and not upon the practicability of procuring a search warrant"⁴⁵

The next significant decision regarding warrantless searches was *Chimel v. California*,⁴⁶ on which the majority in *Belton* strongly relied. When three police officers arrived at the home of Ted Chimel with an arrest warrant, they were ushered inside by Chimel's wife. There they waited for Chimel to arrive. When Chimel entered the house, he was arrested by the officers. Over Chimel's objections, the officers conducted an extensive search of the house.⁴⁷ The officers found numerous items which were taken and admitted into evidence; Chimel was subsequently convicted for the burglary of a local coin shop. The search was upheld by the California Supreme Court as incident to a lawful arrest.⁴⁸ That decision was basically an application of the "reasonableness" test established in *Rabinowitz*.⁴⁹

The United States Supreme Court reversed Chimel's conviction, and stated that "[t]here [was] ample justification . . . for a search of the arrestee's person and the area 'within his immediate control,'"⁵⁰ but no justification existed for searching a room

44. *Id.* at 61. The warrantless search of Rabinowitz's one-room office was held to be reasonable because the search and seizure were incident to a lawful arrest; the room was small and under Rabinowitz's complete control; the search was limited to the one room where the forged stamps were found; and possession of the forged stamps was a crime. *Id.* at 64.

45. *Id.* at 65-66. See note 43 *supra*. The Court stated that "[t]he relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable." *Id.* at 66.

46. 395 U.S. 752 (1969).

47. The officers, accompanied by Chimel's wife, searched the entire three-bedroom house. "In the master bedroom and sewing room, . . . the officers directed the petitioner's wife to open drawers and 'to physically move contents of the drawers from side to side so that [the officers] might view any [fruits of the] burglary.'" *Id.* at 754.

48. *People v. Chimel*, 68 Cal. 2d 436, 439 P.2d 333, 67 Cal. Rptr. 421 (1968). The court stated that the search was "reasonable" within the meaning of the fourth amendment. *Id.* at 442.

49. The Court, in *Rabinowitz*, established that the relevant test was whether the search was "reasonable." See note 45 *supra*. The Court, in *People v. Chimel*, held that the search of Chimel's house was "reasonable" because the search was pursuant to a lawful arrest and "only items which reasonably appeared to be connected with the . . . burglary were seized." *Id.* at 442-43.

50. 395 U.S. at 763. The Court justified this by stating that such a search was

where an arrest did not occur.⁵¹ The Court interpreted the area "within his immediate control" to mean the area from which the arrestee might gain possession of a weapon or possession of evidence which he could then destroy.⁵²

D. Conflicting Decisions Interpreting the Proper Scope of a Search

Federal courts have not been in agreement regarding the scope of a search of the interior of an automobile pursuant to an arrest, as shown by decisions which reach contrary conclusions even though similar factual circumstances are present.⁵³ The United States Supreme Court recognized that the lower courts have found "no workable definition of 'the area within the immediate

necessary to protect the officer's safety and also to prevent the concealment or destruction of evidence.

51. It would logically follow that searching a room other than where an arrest occurs would, in most instances, not be necessary to insure officer safety and prevent the destruction of evidence. *Id.* See *Chambers v. Maroney*, 399 U.S. 42, 47 (1970) (quoting *Preston v. United States*, 376 U.S. 364, 367 (1964)). "Once an accused is under arrest and in custody, then a search made at another place, without a warrant, is simply not incident to the arrest." *Id.*

52. 399 U.S. at 47.

53. Cases which have upheld a warrantless search as an incident to a lawful arrest are:

United States v. Sanders, 631 F.2d 1309 (8th Cir. 1980). In *Sanders*, government agents observed the defendant in an automobile parked on the street. After noting some peculiar behavior, the agents removed the defendant from his car. During the subsequent frisk, the agent spotted a small brown packet on the passenger side of the floorboard and seized it. The packet contained heroin.

United States v. Dixon, 558 F.2d 919 (9th Cir. 1977). In *Dixon*, the defendant was arrested by government agents while still in his car. After the defendant was ordered out of his car, one of the agents observed a revolver and a brown paper bag on the floorboard; the agent seized both items.

United States v. Gonzalez-Rodriguez, 513 F.2d 928 (9th Cir. 1975). In *Gonzalez-Rodriguez*, the defendant was arrested at the United States-Mexico border on the belief that he was transporting firearms. Government agents then immediately searched the defendant's camper.

United States v. Frick, 490 F.2d 666 (5th Cir. 1973). *Frick* involved a defendant who was arrested at his car by an F.B.I. agent who spotted an attache case lying on the back seat of the defendant's car. The agent seized and searched the attache case without a warrant and found incriminating evidence.

Cases which have held similar searches invalid are:

United States v. Benson, 631 F.2d 1336 (8th Cir. 1980). In *Benson* the defendant was arrested and removed from his car and searched. Simultaneously, another detective opened the back door of the car and seized the defendant's tote bag. The detective then searched the tote bag and found cocaine.

United States v. Rigales, 630 F.2d 364 (5th Cir. 1980). In *Rigales*, the car in which the defendant was traveling was stopped by a police officer for a traffic violation. The police found several unspent bullets on the person of one of the occupants of the car. Believing that a leather case on the floorboard of the car contained a weapon, the officer seized and searched the case finding a pistol.

United States v. Stevie, 582 F.2d 1175 (8th Cir. 1978). *Stevie* involved a defendant who was ordered out of his rented car and placed under arrest. Government agents then opened a suitcase on the floor of the car and discovered marijuana.

control of the arrestee'” as it relates to the interior compartment of an automobile when the arrestee was its recent occupant.⁵⁴ The inconsistencies among the lower courts,⁵⁵ therefore, set the stage for the resolution of this issue in *Belton*.

IV. THE MAJORITY DECISION

A. *Reliance Upon Chimel*

In *Belton* the Supreme Court based its decision on the principles established in *Chimel v. California*.⁵⁶ The Court stated that a lawful custodial arrest creates a situation permitting the warrantless search of the arrestee and the immediately surrounding area.⁵⁷ The majority in *Belton* went on to recognize that the defendant was lawfully arrested on a charge of marijuana possession.⁵⁸ The Court further held that the officer, after directing the occupants out of the car, was justified in conducting a warrantless search of the interior compartment of the automobile since it was “within the arrestee’s immediate control” as established in *Chimel*.⁵⁹

The majority also held that police could lawfully examine the contents of any containers⁶⁰ found within the passenger compartment. The majority reasoned that if the passenger compartment is within the arrestee’s immediate control, then any containers found therein would also be within his immediate control.⁶¹ In *Belton*, if the interior of the automobile was within the defend-

54. 101 S. Ct. at 2864. In light of this, the Court stated, “[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 his constitutional protection, nor can a policeman know the scope of this authority.” *Id.*

55. See note 53 *supra*.

56. 101 S. Ct. at 2864 n.3. See notes 46-49 *supra* and accompanying text.

57. 101 S. Ct. at 2864. See note 50 *supra*.

58. 101 S. Ct. at 2865.

59. *Id.* The Court concluded by saying that the search of the defendant’s jacket was a search incident to a lawful arrest, and therefore, did not violate the fourth and fourteenth amendments. *Id.*

60. “Container” includes “closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing, and the like.” *Id.* at 2864 n.4. The Court limited the scope of the search to the “interior of the passenger compartment” and expressly stated that it “does not encompass the trunk.” *Id.* As interesting question presented by Justice Brennan in his dissent was whether special rules would be necessary for stationwagons and hatchbacks, where the luggage compartment may be reached through the interior of the automobile. *Id.* at 2869.

61. *Id.* at 2864.

ant's immediate control, then the defendant could have conceivably reached a weapon or evidence located in the black leather jacket on the backseat. It was further stated that "the lawful custodial arrest justifies the infringement of any privacy interest the arrestee may have."⁶²

B. The Majority's Departure from Chimel's Rationale

Justice Brennan, in his dissent, recognized the importance of interposing a detached and neutral magistrate between the police and suspects when a search is involved. Consequently, he stated that "exceptions to the warrant requirement are to be narrowly construed."⁶³ This is necessary to protect citizens "from unwarranted intrusions into [their] privacy."⁶⁴

Justice Brennan, while recognizing the *Chimel* exception to a warrant requirement pursuant to a search,⁶⁵ emphasized that "compliance with the warrant requirement [should be excused] only when the search 'is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest.'"⁶⁶ This reasoning appears to be in harmony with *Chimel's* principles, which emphasize officer safety and the preservation of evidence.⁶⁷

Since the defendant in *Belton* was already placed under arrest and was outside of the car when the search took place, it would seem that *Chimel's* rule would no longer be applicable. Under such circumstances, it is hard to imagine any danger to officer safety, since the defendant, who is under arrest, could not enter the car to obtain a weapon or destroy evidence.⁶⁸ Since *Belton*

62. *Id.* See also *United States v. Robinson*, 414 U.S. 218 (1973), where the Court upheld a full search of the person incident to a full custody arrest, and *Draper v. United States*, 358 U.S. 307 (1959), where it was determined that the arrest of the defendant was lawful, and therefore, the search of his person pursuant to his arrest was also lawful.

63. 101 S. Ct. at 2866. See *Arkansas v. Sanders*, 442 U.S. 753 (1979) (absent exigent circumstances, the police are required to obtain a warrant before searching luggage taken from an automobile properly stopped and searched for contraband); *United States v. Chadwick*, 433 U.S. 1 (1977) (similar facts and holding as *Sanders*); *Coolidge v. New Hampshire*, 403 U.S. 443 (1971) (searches conducted without a neutral magistrate are *per se* unreasonable under the fourth amendment, subject to few exceptions).

64. *Id.* at 2866 (quoting *Jones v. United States*, 357 U.S. 493, 498 (1958)). It was stated that probable cause for belief that certain items subject to seizure are in a building does not justify a search without a warrant. *Id.* at 497.

65. 101 S. Ct. at 2866. See note 50 *supra* and accompanying text.

66. 101 S. Ct. at 2867 (quoting *Stoner v. California*, 376 U.S. 483, 486 (1964)). Thus, a time and space limitation is placed on a warrantless search. The limitations, nevertheless permit an officer to search for weapons which may be used against him and to search for evidence which may be destroyed by the arrestee.

67. See note 50 *supra*.

68. See note 63 *supra*.

and the other occupants of the automobile were outside of the automobile, under arrest, and separated,⁶⁹ Belton would have never been able to make a dash to the automobile, open its doors, unzip the zipper to his jacket, and obtain a weapon or destroy evidence.⁷⁰ While the defendant *Chimel* may not have realistically been able to make a dash to obtain a weapon or destroy evidence, the scenario in *Belton* is distinguishable from *Chimel*. *Chimel* stood in the same room, or enclosed area, in which the police searched.⁷¹ Yet, in *Belton*, the defendant stood outside the enclosed area in which the police searched. This type of distinction was noted in *Chimel* when Justice Stewart, writing for the majority, stated that "[t]here is no . . . justification . . . for routinely searching any room other than that in which an arrest occurs."⁷² Clearly, the situation in *Belton* is analogous to such a search of another room, in that standing outside of an automobile that is being searched is the same as standing in one room while the adjoining room is being searched.

Justice Brennan framed the issue under *Chimel* as "not whether the arrestee could ever have reached the area that was searched, but whether he could have reached it at the time of arrest and search."⁷³ If the arrestee cannot possibly reach the area

69. 101 S. Ct. at 2862.

70. Justice Brennan correctly pointed out that *Chimel* places "temporal and spatial limitations" on warrantless searches incident to an arrest. *Id.* at 2867. See also *Vale v. Louisiana*, 399 U.S. 30 (1970), where police arrested the defendant in front of his house, made a brief inspection of the house to determine if anyone else was there, and then made a warrantless search of the house for narcotics they believed were hidden there. The search was held invalid. *Id.* at 35. The Court, quoting *Shipley v. California*, 395 U.S. 818, 819 (1969), said, "[a] search may be incident to an arrest 'only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest.'" 399 U.S. at 33 (emphasis in original). In *Dyke v. Taylor Implement Mfg. Co.*, 391 U.S. 216 (1968), the Court held that a search of a vehicle after an arrest was unlawful where the car had not been impounded and the defendant was taken immediately to court to make bail.

71. 395 U.S. at 754. It was *Chimel*, or at least his wife, who stood in the room while the police searched.

72. *Id.* at 763. Note further that *Belton* was arrested while standing outside the vehicle. 101 S. Ct. at 2862.

73. 101 S. Ct. at 2868. This statement by Justice Brennan is in harmony with *Chimel's* underlying rationale of protecting the officer in the field and preventing and destruction of evidence. If an arrestee cannot possibly reach an area after his arrest, then *Chimel's* rationale is not applicable and a search warrant should be obtained. Taken to its extreme conclusion, if an officer could conduct a warrantless search of an area that was, at a time close to the arrest, under an arrestee's control, the officer would be justified in doing so, even though the arrestee may be incarcerated 100 miles away. This is hardly a result called for by *Chimel*.

searched at the time of the search, then *Chimel* is not applicable. It is this critical limitation which the majority failed to deal with effectively in *Belton*.

V. QUESTIONS RAISED BY THE DECISION

A. Does the Majority Establish a "Bright Line" Rule?

Justice Brennan believed that the majority failed to establish a "bright line" rule⁷⁴ to guide the police officer in the field.⁷⁵ Though the officer may be able to draw a distinction between the interior of a car and the trunk,⁷⁶ under the majority's holding, such a distinction becomes blurred when, for example, the automobile is a stationwagon or hatchback model.⁷⁷ As Justice Brennan's dissent pointed out, "the Court's new rule abandons the justifications underlying *Chimel* [and thus] it offers no guidance to the police officer seeking to work out these answers for himself."⁷⁸ Justice Brennan echoed the fear expressed in *Chimel*, that if a search is allowed to go into areas beyond the person and the immediate control of the arrestee, then there is no point of rational limitation.⁷⁹

B. Concern for Luggage, Briefcases and Other Containers

Justice White, in his dissent, expressed concern over the fact that the majority, by its holding, possibly allows the warrantless search of luggage, briefcases, and other containers in the interior of an automobile even in the absence of any suspicion that they

74. A "bright line" rule may be seen as a "single familiar standard" which would guide police officers in certain situations they confronted. Such a standard is necessary because officers have only limited time and legal training to make decisions which may infringe on personal interests. *Dunaway v. New York*, 442 U.S. 200, 213-14 (1979).

75. 101 S. Ct. at 2869. Justice Brennan stated that "the Court's attempt to forge a 'bright line' rule fails on its own terms." *Id.*

76. The distinction between the interior of a car and a trunk is significant in that the officer may search the interior of the car if a person is arrested in close proximity of the interior because this is an area from which a weapon may be reached or evidence destroyed. But a warrantless search of the trunk would not be justified because the arrestee would not be able to reach a weapon or destroy evidence in the trunk.

77. In a stationwagon or a hatchback, the interior of the car is connected to the trunk or storage area. Thus, the trunk is readily accessible from the interior of the car. The question presented is whether the police officer can conduct a warrantless search of this trunk area in order to discover weapons or preserve evidence.

78. 101 S. Ct. at 2869 (emphasis in original).

79. 395 U.S. at 766. Concern for such a doctrine was also expressed in *Mincey v. Arizona*, 437 U.S. 385 at 393 (1978). Homicide detectives conducted a warrantless search of the defendant's apartment after a shootout in which an undercover officer was killed. The Court stated that the search was invalid because there was no emergency situation. *Id.*

contain anything in which the police have a legitimate interest.⁸⁰ In *United States v. Chadwick*, federal narcotic agents opened the defendant's footlocker without consent or a search warrant and found large amounts of marijuana in it.⁸¹ The Court there stated that a person's "expectations of privacy in personal luggage are substantially greater than in an automobile."⁸² On that basis, the search was held unconstitutional. A similarity between *Belton* and *Chadwick* can be found, in that a person has a greater expectation of privacy both in a footlocker and a jacket than he does in an automobile. A jacket, like a footlocker, can contain personal items which an individual may desire to keep from public view. It is this interest in privacy which the fourth amendment apparently seeks to protect.

It would seem that the warrantless search of containers in an automobile is no longer justified⁸³ by the "automobile exception"⁸⁴ when the automobile and container are under police control. If an automobile is under police control, there is no risk that it will be moved out of the jurisdiction before a search warrant is obtained. Likewise, the containers therein are equally secure.

Once police have control of the item to be searched, there is time to obtain a search warrant from a magistrate.⁸⁵ It was the recognition that the container could not be removed before a search warrant was obtained that led the Court in *Chadwick*⁸⁶

80. 101 S. Ct. at 2870. Justice White's premise, that there was no probable cause to believe that contraband or evidence of a crime would be found, may be faulty. The officer in *Belton* smelled burnt marijuana and saw an envelope marked "Supergold" which he associated with marijuana. *Id.* at 2861-62. This may have led the officer to believe that more marijuana was to be found.

81. 433 U.S. 1 (1977) (the defendant's footlocker was in the automobile's trunk).

82. *Id.* at 13. In *Katz v. United States*, 389 U.S. 347 (1967), see notes 17-18 *infra* and accompanying text, the Court recognized and protected an individual's privacy interest in a public telephone booth. The Court held that bugging a public telephone and listening to the defendant's conversation infringed upon the reasonable expectation of privacy upon which the user justifiably relied. *Id.* at 353. The Court there was protecting the defendant's "expectation of privacy."

83. See *Robbins v. California*, 101 S. Ct. 2841 (1981) (A warrantless search of a container in a car trunk was not allowed even though there was probable cause to do so).

84. See note 30 *supra* and accompanying text.

85. An argument can be made that obtaining a search warrant under these circumstances is a mere formality, therefore justifying a warrantless search. Nonetheless, it is a detached, neutral magistrate who must decide if probable cause to search exists, thus permitting the issuance of a warrant.

86. 433 U.S. 1 (1977). In *Chadwick*, federal narcotic agents removed a footlocker from the defendant's automobile and brought it to the Federal Building in Bos-

and *Arkansas v. Sanders*⁸⁷ to hold that the warrantless searches violated the fourth amendment. Unless an officer suspects that a container under his control contains a weapon, or circumstances require immediate action,⁸⁸ Justice White's point is well taken: a warrant is a condition precedent to the search.

VI. IMPACT

A. *Belton* Constitutes a Radical Departure From *Chimel*

The *Belton* decision is a radical departure from *Chimel* in that it fails to reflect *Chimel's* underlying policy.⁸⁹ The *Chimel* decision allowed for a warrantless search of the area within the "immediate control" of the arrestee.⁹⁰ Thus, the officer knew the boundaries of the area in which he could conduct a warrantless search. *Chimel* provided the officer with a reasonable, workable guide. This was so, because an officer could reasonably determine the area from which an arrestee could obtain a weapon or reach evidence and destroy it.

In *Chimel*, after the defendant was arrested in his house, the police conducted a warrantless search of the entire house.⁹¹ A search of the entire house was not justified, since, at the time, there was no risk that the defendant might obtain a weapon or destroy evidence in another part of the house. Therefore, the Court established that the police may search only the area "within the immediate control"⁹² of the arrestee, for this is where a weapon may be retrieved or evidence destroyed. Comparing the facts in *Belton*, one finds that the officer had removed the occupants from the automobile and placed them under arrest. The officer then patted the individuals down and separated them so they could not make physical contact with each other. If the majority in *Belton* had followed the rationale of *Chimel*, it would have been evident that there was no need to conduct a warrantless search of the automobile at that time. There was no risk that the individuals would obtain a weapon from or destroy evidence in the automo-

ton. Thus, the footlocker could not have been moved by the defendant before a search warrant was obtained.

87. 442 U.S. 753 (1979). See also note 53 *supra*. In *Sanders*, police officers stopped a taxi and requested that the driver open the trunk. The police found a suitcase in the trunk and opened it without the consent of the defendant or his companion; marijuana was discovered inside.

88. See note 50 *supra*.

89. *Chimel* permits an officer to search the area within the "immediate control" of the arrestee in order to find weapons which may be used against the officer or to prevent the destruction of evidence by the arrestee. 395 U.S. at 763.

90. *Id.*

91. *Id.* at 754.

92. *Id.* at 763.

bile. The automobile was no longer "within the immediate control" of the arrestees.⁹³ Under these circumstances, the proper conduct by the officer would have been to secure the automobile and present evidence to a magistrate which would justify the issuance of a search warrant.

Belton has the effect, then, of expanding the permissible scope of searches incident to an arrest by allowing officers to search areas which could not possibly be reached by arrestees at the time of the arrest. It can be clearly seen that *Belton* is a significant departure from *Chimel* since the search was not reasonably motivated by a desire to insure officer safety or prevent the destruction of evidence. Instead, *Belton* reflects the proposition that if the area searched was within the arrestee's immediate control just prior to his arrest, then the search is valid.

B. Belton Did Not Establish a "Bright Line" Rule

Before the *Belton* decision, an officer was guided by the rule that he could search the area within the arrestee's "immediate control."⁹⁴ As previously stated, an officer in the field can fairly interpret the boundaries of the area within the arrestee's "immediate control." However, *Belton* allows the officer to conduct a warrantless search of the arrestee's automobile when the arrestee was merely its recent occupant. This fails to establish a "bright line" rule to guide the officer in his work. For example, when an officer is conducting a search of the interior of an automobile, he will encounter problems if it is a hatchback model where the luggage compartment can be reached from the interior. The question presented is whether the officer may conduct a search of this luggage compartment. Under the *Belton* holding, the officer would be permitted to invade the luggage area simply because the person arrested was recently in the automobile.⁹⁵

Similarly, the *Belton* decision fails to effectively articulate the extent to which the interior of an automobile may be searched.

93. The Court, in *Chimel*, construed the area "within the immediate control" of the arrestee to be "the area from which [the arrestee] might gain possession of a weapon or destructible evidence." *Id.*

94. *Id.* See notes 60, 74-75 *supra*.

95. The Court in *Belton* held 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." 101 S. Ct. at 2864.

To be decided in the future is the important issue of whether an officer may search the interior door panels, the floorboard, or the upholstery. Can the officer, in effect, "strip" the interior of the automobile? Since *Chimel's* underlying rationale was not followed in *Belton*, the officer has a less than adequate guide to help him answer these questions. *Belton*, then, poses more questions than it answers.

While the Court in *Belton* insisted that it was following *Chimel*,⁹⁶ in that it held that the defendant's jacket was "within the meaning of the *Chimel* case,"⁹⁷ it nevertheless reached beyond the limitations imposed by *Chimel*. Despite the fact, that the Court has retained the "immediate control" language, the factual inconsistencies between *Chimel* and *Belton* leave open the precise boundaries of that language and test.

C. *The Belton Decision and the Exclusionary Rule*

The competing interests involved with the administration of the exclusionary rule⁹⁸ are, on the one hand, effective law enforcement, and, on the other, deterrence of unlawful police conduct and avoidance of judicial sanction of such unlawful police conduct.⁹⁹ In the area of searches, the exclusionary rule mandates that evidence obtained in violation of the fourth amendment not be admitted into evidence.¹⁰⁰ Thus, the exclusionary rule acts to deter police from violating an individual's protected rights.¹⁰¹ Po-

96. The Court stated that "[o]ur holding today does no more than determine the meaning of *Chimel's* principles in this particular and problematic content." 101 S. Ct. at 2864 n.3.

97. *Id.* at 2865.

98. The exclusionary rule provides for the exclusion from a criminal prosecution of evidence obtained in violation of the Constitution. The exclusionary rule was first established in *Weeks v. United States*, 232 U.S. 383 (1914), where the Court held that any evidence obtained by federal officers in violation of the fourth amendment would be barred from a federal prosecution. *Id.* at 398. In *Mapp v. Ohio*, 367 U.S. 643 (1961) the Court held that "all evidence obtained by searches and seizures in violation of the Constitution is . . . inadmissible in a state court." *Id.* at 655.

99. D. FELLMAN, *THE DEFENDANT'S RIGHTS TODAY* 295-96 (1976). A similar sentiment was echoed by Chief Justice Warren in *Spano v. New York*, 360 U.S. 315 (1959), where he identified the two fundamental interests of society which conflict as society's interest in prompt and efficient law enforcement, and its interest in preventing the rights of its members from being abridged by illegal law enforcement. *Id.*

100. See *Katz v. United States*, 389 U.S. 347 (1967) (application of the exclusionary rule where evidence obtained by an illegal search was not admissible into evidence).

101. In *Elkins v. United States*, 364 U.S. 206, 217 (1960), the Court stated that "[t]he rule is calculated to prevent, not to repair. Its purpose is to deter—to compel respect for the constitutional guarantee in the only effectively available way—by removing the incentive to disregard it."

lice will be hesitant to conduct an illegal search if the fruits of the search will not be allowed into evidence at the defendant's trial.

The Court, in *Belton*, has attempted to tip the balance in favor of law enforcement. This was done by extending the scope within which a warrantless search can be conducted.¹⁰² The *Belton* decision thus extends the area in which law enforcement officers may operate without running afoul of the exclusionary rule.

Yet, the *Belton* decision has in the same instance hampered the police in law enforcement. This is so because *Belton* does not establish any guidelines to aid the officer in determining how far he may go in conducting a warrantless search.¹⁰³ An officer, not knowing the area in which a legal search can be conducted, runs the risk of seizing evidence which will later be suppressed at the defendant's trial.¹⁰⁴ Thus, the *Belton* decision has the effect of allowing officers to avoid the exclusionary rule in certain situations, and yet, leading them into its clutches in others.

D. *Belton's Effect on Future Cases*

It is the author's belief that courts will look to *Belton*, and not *Chimel*, when determining the proper scope of a warrantless search of an automobile. In the future, a warrantless search of an automobile will most likely be upheld if the arrestee was its recent occupant. *Chimel's* "immediate control" test will probably no longer be viable in this area. As a consequence, just how far an officer may go in searching the interior of an automobile will be left to the conscience of the court deciding the issue. This is the natural result of a decision such as *Belton* which offers no concrete guidelines.

VII. CONCLUSION

The Supreme Court in *New York v. Belton* extended the scope of a warrantless search pursuant to an arrest to include the interior compartment of an automobile in which the arrestee had been riding. In so doing, the Court departed from the rationale of

102. See notes 56-62 *supra* and accompanying text.

103. See notes 74-79 *supra* and accompanying text.

104. "The introduction of the [e]xclusionary [r]ule to state law enforcement systems has made it necessary for all state and local law enforcement officers to know the law or to suffer the frustration of losing cases." J. CREAMER, *THE LAW OF ARREST, SEARCH AND SEIZURE* 92 (1968).

Chimel. This departure is critical, because the Court has abrogated the useful guidelines established in *Chimel*. In its wake, *Belton* has left the permissible scope of warrantless searches subject to speculation.

In the future, the Court will likely have to answer many questions relating to the scope and time of the search of the interior of an automobile. Just how the Court will rule on these questions cannot be known, for the Court, by its decision in *Belton*, has left itself with no guidelines with which to work.

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