CASENOTE

To Serve and Protect: *Thornton v. United States* and the Newly Anemic Fourth Amendment

In *Thornton v. United States*,[1] the United States Supreme Court further weakened the protection afforded by the Fourth Amendment[2] by holding that an officer may search the passenger compartment of a vehicle incident to arrest even when the suspect is first approached after exiting the vehicle.[3] Under the guise of providing protection to police officers, this decision greatly expands the power of an arresting officer to search the private property of the arrestee and creates uncertainty on what constitutional limits apply to searches incident to arrest outside the home.

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1. 124 S. Ct. 2127 (2004).
2. The Fourth Amendment of the United States Constitution 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.

3. *Thornton*, 124 S. Ct. at 2132.

I. FACTUAL BACKGROUND

Deion Nichols, a police officer in Norfolk, Virginia, was driving an unmarked police car while in uniform. Officer Nichols first noticed Marcus Thornton when Thornton slowed his automobile to avoid driving alongside the unmarked police car. Officer Nichols, suspicious of Thornton's actions, pulled onto a side street and waited for Thornton to pass. After Thornton passed, Officer Nichols ran Thornton's license plates and found that the plates were registered to a Chevrolet two-door, not the Lincoln Town Car that Thornton was driving. Thornton had parked and exited the vehicle before Officer Nichols pulled him over. The officer accosted Thornton, now some distance from his automobile, asked him for his driver's license, and informed Thornton that he was driving with plates that did not match the vehicle.[4]

Thornton was rambling and appeared nervous. His behavior caused Officer Nichols to fear for his safety, so the officer inquired whether there were any weapons or narcotics in the car or on Thornton's person. Thornton said he was not in possession of weapons or narcotics. Officer Nichols patted down Thornton, and the search produced two bags, one containing crack cocaine, the other containing marijuana. Thornton was handcuffed and placed in the back seat of the unmarked police car. The officer then searched Thornton's vehicle and found a 9-millimeter handgun under the driver's seat.[5]

Thornton was charged by a grand jury with possession with intent to distribute crack cocaine, possession of a firearm in furtherance of a drug trafficking crime, and possession of a firearm after having been previously convicted of a felony. Thornton attempted to suppress the evidence of the firearm, arguing that it was the fruit of an unconstitutional search.[6] The District Court for the Eastern District of Virginia denied the motion to suppress and held that the search was valid under *New York v. Belton*,[7] or in the alternative, it was valid because Officer Nichols could have conducted an inventory search of the vehicle.[8] Thornton was convicted, and he appealed. Thornton argued that *Belton* was limited to cases in which the officer first contacted the arrestee while the arrestee remained in the car. The Fourth Circuit Court of Appeals affirmed the district court's decision noting that the need to disarm the arrestee and preserve precious evidence for trial did not limit

4. *Id.* at 2129.
5. *Id.*
6. *Id.* at 2130.
7. 453 U.S. 454 (1981).
8. *Thornton*, 124 S. Ct. at 2129-30.

Belton in the way Thornton argued.[9] The Supreme Court of the United States granted certiorari to address the issue of the limitations to the search incident to arrest exception.[10]

II. LEGAL BACKGROUND

The critical issue in search incident to arrest cases is to what extent can an arresting officer search the area around the arrestee. The Supreme Court's record on this issue is not the model of consistency.[11] Starting in dictum in *Weeks v. United States*,[12] the Court approved of warrantless searches incident to a lawful arrest.[13] For more than fifty years, the Court repeatedly switched between limiting and expanding the authority of law enforcement officers to conduct warrantless searches incident to a lawful arrest.[14]

A. *The Immediate Control Standard*

The mercuric holdings of the Court acquired some steadfastness in *Chimel v. California*.[15] Following *Chimel*, when determining the authority of an arresting officer to search the area around the arrestee, the courts engage in a two-way balancing act. Courts weigh the arrestee's Fourth Amendment rights against the concern for the officer's safety, and the desire to protect evidence from destruction.[16]

The Court's purpose in *Chimel* was to firmly establish the permissible scope of warrantless searches incident to arrest.[17] The Court attempted to identify to what extent an arresting officer could search the arrestee and the area around the arrestee.[18] In *Chimel* police officers arrived at Chimel's home with an arrest warrant for his burglary of a coin shop.

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9. *Id.* at 2130.
10. *Id.* at 2129.
11. Chimel v. California, 395 U.S. 752, 755 (1969).
12. 232 U.S. 383 (1914).
13. *Chimel*, 395 U.S. at 755.
14. *See* Trupiano v. United States, 334 U.S. 699, 709-10 (1948) (holding search was illegal because agents had enough time to seek a search warrant); Harris v. United States, 331 U.S. 145, 152 (1947) (allowing the warrantless search of arrestee's entire four room apartment when he was arrested in his living room); Go-Bart Importing Co. v. United States, 282 U.S. 344, 357-58 (1931) (holding that the search conducted during the arrest was unlawful because no crime had been committed in the presence of the officers and the officer had time to swear out a search warrant); Carroll v. United States, 267 U.S. 132, 158 (1925) (holding that both the person and the area can be searched in order to seize the fruits of the crime).
15. 395 U.S. 752 (1969).
16. *Id.* at 763-65.
17. *Id.* at 753.
18. *Id.*

The officers knocked on the door and were admitted into the house by Chimel's wife; there they waited for Chimel to return from work. When Chimel entered his home the officers handed Chimel the arrest warrant and asked if he would allow a search of the home. Over Chimel's protests and without a search warrant, the officers proceeded to search the entire three-bedroom home. The forty-five minute search produced coins and several medals that were later admitted into evidence and used to convict Chimel.[19] The Court stated that to search areas not occupied by the arrestee would require a search warrant.[20] Along those lines, the Court held that an arresting officer may search the arrestee and the "area within his immediate control" for weapons and for evidence that might be concealed or destroyed by the arrestee but could not search a room apart from the one the arrestee occupied or even the drawers located in the room in which the arrest took place.[21] The Court reasoned that to allow a search of areas outside of the arrestee's immediate control would too greatly infringe on Fourth Amendment rights.[22]

Throughout its opinion in *Chimel*, the Court emphasized the need to protect arresting officers from harm, as weapons that are close by or concealed can fall into the hands of the arrestee.[23] Implicit in the concern for officer safety and evidence integrity was the assumption that the arrestee was close enough to a weapon to employ it or close enough to evidence to conceal or destroy it. The Court expressly indicated that the reason the searches were allowed was to protect the officer and any evidence from the arrestee.[24] Therefore, there was no justification to allow searches of areas to which the arrestee had no access.[25] While the standard set by *Chimel* did establish a more concrete standard for search of the area incident to arrest, the Court stated: "the recurring questions of reasonableness of searches depend upon the facts and circumstances . . . of the case."[26] The dependency upon facts and circumstances became the ground for expansion of the rule established in *Chimel*. Search of the arrestee's person incident to arrest had been well established; the contention surrounded the issue of where to draw the line for search of the area around the arrestee.[27]

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19. *Id.* at 753-54.
20. *Id.* at 763.
21. *Id.*
22. *Id.*
23. *Id.* at 763-64.
24. *Id.* at 763.
25. *Id.*
26. *Id.* at 765.
27. United States v. Robinson, 414 U.S. 218, 224 (1973).

B. *Search Authorized No Matter the Basis of the Arrest*

In *United States v. Robinson*,[28] the Court held that, so long as there was a custodial arrest, a search of an arrestee was clearly authorized even when the arresting officer did not express fear of physical harm or destruction of evidence.[29] *Robinson* involved a police officer who stopped defendant, Robinson, because he suspected Robinson of operating an automobile after the revocation of his operator's permit. When Robinson stopped his car and exited the vehicle, he was arrested. Following department procedure, the arresting officer patted down Robinson and found a crumpled cigarette package containing fourteen gelatin capsules of heroin.[30] Robinson contested the search and the admission of the evidence it produced, claiming that the search violated the Fourth Amendment.[31]

The Court once again explained that search incident to arrest, the traditional exception to the warrant requirement of the Fourth Amendment, allows for a search of the person of the arrestee following a lawful arrest and a search of the area within the control of the arrestee.[32] Rejecting Robinson's argument, the Court held that "all custodial arrests [should be treated alike] for purposes of search justification."[33] The Court's holding was in effect an expansion of *Chimel*.[34] The Court expressly stated that it was not inclined to limit the authority to search incident to arrest on the assumption that some arrestee's, by nature of their offense, are more dangerous than others.[35] If an arrest (on whatever ground) was lawful, the standard established in *Robinson* always allowed a search.

C. *Automobile Bright-line Established*

Nearly ten years later, in *New York v. Belton*,[36] the Court attempted to establish a bright-line rule for the proper scope of the search of an automobile interior incident to lawful arrest.[37] Of course, such a search of the passenger compartment after the arrest of the occupants would

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28. 414 U.S. 218 (1973).
29. *Id.* at 235-36.
30. *Id.* at 220-23.
31. *Id.* at 220.
32. *Id.* at 224.
33. *Id.* at 235.
34. *Chimel*, 395 U.S. 752.
35. *Robinson*, 414 U.S. at 234.
36. 453 U.S. 454 (1981).
37. *Id.* at 459.

require an extension of the rule established by *Chimel* because the arrested former occupants would be out of the car, causing nothing in the car to be within their immediate control. In *Belton* a police officer in an unmarked car pulled over a speeding automobile occupied by four men. While conducting the traffic stop, the police officer discovered that none of the occupants owned the car. The officer also smelled burnt marijuana, and with his suspicions aroused he instructed the occupants to exit the vehicle and arrested them for marijuana possession. After separating the occupants into four different areas, the police officer patted them down and then searched the passenger compartment of the vehicle. This search revealed marijuana in an envelope and cocaine in the zipped pocket of a jacket located on the back seat of the car. The evidence obtained in the warrantless search was used to convict the owner of the jacket for criminal possession of a controlled substance.[38]

In reaching its conclusion in *Belton*, the Court recognized that *Chimel* established the principle that searches incident to arrest may not extend beyond the area in the immediate control of the arrestee, but then stated that *Chimel's* language had not provided a workable standard.[39] If the Court had limited itself to *Chimel*, the search would have been problematic because the jacket was inaccessible to the arrestee at the time of the search. Nevertheless, in an effort to ensure police officer safety, the protection of evidence, and establish a workable standard for police officers in the field, the Court considered the search valid.[40] The Court held that after making a lawful custodial arrest of a car's occupant, the officer may search the passenger compartment including any containers and their contents present in the passenger compartment.[41] In doing so, the Court created a legal fiction, which states that everything within the passenger compartment is within the reach or immediate control of an occupant. Police officers now had a bright-line rule to follow; so long as the arrestee was an occupant of a vehicle, the vehicle's passenger compartment could be searched for weapons and evidence.[42]

38. *Id.* at 455-56.
39. *Id.* at 460.
40. *Id.* at 462-63.
41. *Id.* at 460.
42. *Id.*

D. *Immediate Control Standard Limited to Instances Involving Arrest*

In *Knowles v. Iowa*,[43] the Supreme Court, in an uncharacteristic and unanimous decision, declined to extend the search incident to arrest principles of *Belton* to a case in which the suspect was given a citation, but not arrested.[44] In *Knowles* a police officer stopped a driver for speeding and only issued him a citation although he could have lawfully arrested the driver. After issuing the citation for speeding, the police officer conducted a full search of the vehicle without the driver's consent. This search revealed a bag of marijuana and a pipe used for smoking marijuana. The objects were located under the driver's seat. The driver was subsequently arrested and charged with violations of state laws concerning controlled substances. At trial the driver moved to suppress the evidence because the search was conducted without an arrest of the driver. The evidence was admitted, and the Iowa Supreme Court affirmed the driver's conviction.[45]

The United States Supreme Court held that neither of the historical justifications for the search incident to arrest exception applied—(1) disarming the arrestee in an effort to protect the arresting officer or (2) the need to protect evidence for later use.[46] The underlying policy of protecting officers from threats to their safety simply was not sufficiently present in issuing a traffic citation to allow a full search of a vehicle.[47] The Court stated that much of the danger in a custodial arrest comes from the extended period of time in which the arrestee and the arresting officer were in each other's presence, especially when the officer transported the arrestee to the police station.[48] Once again the Court weighed the arrestee's Fourth Amendment rights against the policy of protecting both the arresting officer and any evidence that might be used at trial. In *Knowles* the scales tipped in favor of the arrestee.

III. COURT'S RATIONALE

The Supreme Court in *Thornton v. United States*,[49] addressed a variation of the question presented in *Belton* and extended the *Belton* rule to circumstances in which a police officer does not initiate contact

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43. 525 U.S. 113 (1998).
44. *Id.* at 118-19.
45. *Id.* at 114-15.
46. *Id.* at 116-17.
47. *Id.* at 117.
48. *Id.*
49. 124 S. Ct. 2127 (2004).

with the arrestee until after the arrestee has exited his vehicle.[50] The rule set forth in *Belton* states: "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."[51] The majority approached *Thornton* as a natural extension of the bright-line rule created by *Belton*.[52]

The majority disregarded the attempts by Thornton to distinguish the facts of his case from those of *Belton* and reasoned that the danger (both to an arresting officer and to evidence) presented by an arrestee who was standing *beside* his vehicle was for all practical purposes substantially similar to the threat posed by an arrestee sitting *inside* the passenger compartment of his vehicle.[53] Thornton's admission that he was close to the car temporally and spatially was particularly persuasive to the majority.[54] The Court exhibited great concern for safety of the officer.[55] Stating that a search could only be conducted when the vehicle's recent occupant had been arrested and that the danger posed to the arresting officer came from the stress of the arrest itself, the majority was persuaded that stress was not reduced merely because the arrestee was first approached while out of his vehicle.[56] The majority also stated that the arrestee being outside of his vehicle did not make it less likely that the arrestee might "lunge for a weapon or . . . destroy evidence if he [was] outside of, but still in control of, the vehicle."[57]

The majority's primary concern was the safety of the arresting officer, and the Court sought to establish a clear rule to govern all search incident to arrest situations.[58] The practical effect of the majority's opinion is to help prevent circumstances in which the arresting officer is forced to guess when he first initiated contact with the arrestee.[59] To accomplish that objective, the majority held that to satisfy the new rule presented in *Thornton*, the arrestee need only be a recent occupant of the car that is the subject of the search.[60]

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50. *Id.* at 2129.
51. *Id.* at 2130-31 (quoting *Belton*, 453 U.S. at 460).
52. *Id.* at 2131-32.
53. *Id.*
54. *Id.* at 2130, 2132.
55. *Id.* at 2131.
56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.* at 2132.
60. *Id.*

A. *O'Connor Concurrence*

Justice O'Connor, concurring, wrote that she joined in all but footnote four of the majority's opinion.[61] Justice O'Connor expressed dissatisfaction with the state of search incident to arrest law.[62] Furthermore, Justice O'Connor expressed disapproval of the fact that many lower court decisions "treat the ability to search a vehicle incident to the arrest . . . as a police entitlement rather than an exception," justified by the desire to protect the arresting officer and possible evidence.[63] Justice O'Connor would have adopted Justice Scalia's point of view had the parties addressed the issue of allowing searches when the search was relevant to the cause of the arrest (in this case the vehicle could be searched because of the discovery of marijuana on Thornton's person).[64]

B. *Scalia and Ginsburg's Concurrence*

Justices Scalia and Ginsburg, also concurring, expressed their displeasure with the majority's extension of the search incident to arrest exception.[65] First, they emphasized the ridiculous notion that a handcuffed suspect could break free of handcuffs, get out of a locked squad car, and then make it to a weapon or a piece of evidence located in a vehicle.[66] Second, Justices Scalia and Ginsburg contended that because the arrestee had been handcuffed and placed in the back of the police car, the danger to the arresting officer or the evidence ceased to exist.[67] Therefore, the conditions justifying the search incident to arrest exception were no longer present.[68] Third, they rebutted the notion that *Belton* searches are reasonable by addressing the frequency with which searches are conducted while the arrestee is handcuffed in the back of a police car.[69] Justices Scalia and Ginsburg asserted that the passenger compartment of the arrestee's car was simply not within his reach when the arrestee was handcuffed in the back of a police

61. *Id.* at 2133 (O'Connor, J., concurring).
62. *Id.* (O'Connor, J., concurring).
63. *Id.* (O'Connor, J., concurring).
64. *Id.* at 2133, 2137-38 (O'Connor, J., concurring).
65. *Id.* at 2133 (Scalia & Ginsburg, JJ., concurring).
66. *Id.* (Scalia & Ginsburg, JJ., concurring).
67. *Id.* at 2134-35 (Scalia & Ginsburg, JJ., concurring).
68. *Id.* (Scalia & Ginsburg, JJ., concurring).
69. *Id.* at 2135 (Scalia & Ginsburg, JJ., concurring).

car.[70] Thus, in the present case, a *Belton* search was not justifiable if *Belton* was truly based on a fear of danger to an officer or evidence.[71]

In an effort to avoid advocating the complete abandonment of *Belton*, Justices Scalia and Ginsburg attempted to recast *Belton*, so that Belton searches do not depend on *Chimel's* desire to protect officers or evidence.[72] If *Belton* searches are justifiable, Justices Scalia and Ginsburg argued that they are so because the search would have been constitutional on the ground that it was relevant to the crime for which the arrestee was arrested.[73] The basis of their argument comes from *United States v. Rabinowitz*,[74] which relied on the police officer's general interest in gathering evidence related to the crime for which the arrestee was arrested and not on a desire to prevent concealment or destruction of evidence.[75] Justices Scalia and Ginsburg would have determined the search was constitutional because the arresting officer had reason to believe more contraband was located in the car.[76]

C. *Stevens and Souter's Dissent*

Justices Stevens and Souter, dissenting, believed that *Belton's* basis for expanding *Chimel* was not a concern for police officer safety, but instead the need to create a straightforward rule that could be easily applied and enforced.[77] They argued that the majority only muddied the clarity established by *Belton* when it extended the rule to circumstances in which the arrestee was first approached while outside of his car.[78] Furthermore, Justices Stevens and Souter stated that *Belton's* bright-line rule "is not needed for cases in which the arrestee is first accosted when he is a pedestrian."[79] Because the bright-line rule from *Belton* is not necessary in a case involving a suspect who has exited a vehicle, Justices Stevens and Souter claimed *Chimel* provided all the guidance necessary for arresting officers in such circumstances, "[t]he . . . rule should provide the same protection to a 'recent occupant' of a vehicle as to a recent occupant of a house."[80] Justices Stevens and Souter believed the only justification in the present case for extending

70. *Id.* (Scalia & Ginsburg, JJ., concurring).
71. *Id.* (Scalia & Ginsburg, JJ., concurring).
72. *Id.* (Scalia & Ginsburg, JJ., concurring).
73. *Id.* at 2135-36 (Scalia & Ginsburg, JJ., concurring).
74. 339 U.S. 56 (1950).
75. *Id.* at 60-64.
76. *Thornton*, 124 S. Ct. at 2137-38 (Scalia & Ginsburg, JJ., concurring).
77. *Id.* at 2138 (Stevens & Souter, JJ., dissenting).
78. *Id.* at 2139 (Stevens & Souter, JJ., dissenting).
79. *Id.* at 2140 (Stevens & Souter, JJ., dissenting).
80. *Id.* (Stevens & Souter, JJ., dissenting).

Belton was the interest in uncovering all possible evidence.[81] The Justices further stated that the privacy interests guaranteed by the Fourth Amendment must trump an arresting officer's desire to obtain all the possible evidence without waiting for a warrant.[82]

IV. IMPLICATIONS

The consequences of *Thornton* are that police officers have the liberty to arrest a suspect who is not in his car and then, without a warrant, search the vehicle for evidence to bolster whatever cause led to the initial arrest. Presumably, this extension will allow the officers to proceed with caution because they need not rush to approach the suspect to get him before he exits the vehicle. However, as the concurring opinion of Justices Scalia and Ginsburg points out, once the suspect is arrested and moved away from the vehicle, the true threat of danger from that suspect, at least for *Belton* purposes, is over.

Additionally, the holding in *Thornton* does not enhance or clarify the all-important bright-line rule established by *Belton*. Prior to *Thornton*, the arresting officer only needed to decide if he had approached the arrestee while he was still in the vehicle. After *Thornton*, an arresting officer must determine what is a "recent occupant" before conducting a search for weapons or evidence. It is the ambiguity created by the new "recent occupant" standard that will be *Thornton's* most problematic impact. By applying the holding in *Thornton*, one can easily imagine a situation in which the arrestee's vehicle is searched even though he had not been in the vehicle that day. Imagine that a suspect, while approaching a vehicle, reaches for the door handle to his car just as a police officer accosts him. Subsequently, the suspect is arrested. Now what is to prevent the officer from searching the car under *Thornton*? The "recent occupant" standard seems rather dubious in this case because the arrestee could lunge into the passenger compartment to obtain a weapon or destroy evidence. The fact that he is about to enter the car rather than just recently exited should be of no import if the basis for the extension truly is a concern for the safety of officers and the preservation of evidence. It is only a matter of time before the new *Thornton* standard is extended.

Thornton only continues the trend of minimizing the Fourth Amendment privacy rights of an individual. Search incident to arrest is becoming the norm and not the exception to the rule. In fact, *Thornton* may have stretched the exception of search incident to arrest past the

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81. *Id.* (Stevens & Souter, JJ., dissenting).
82. *Id.* (Stevens & Souter, JJ., dissenting).

breaking point. Furthermore, police officers had already played fast and loose with the more restrictive *Belton* rule as the concurring opinions of Justices O'Connor, Scalia, and Ginsburg highlight. According to these Justices, it was already standard practice for police officers to arrest the occupant of a car, place that occupant in handcuffs, in the back of a police car, and then conduct a search of the arrestee's vehicle. The Court's holding in *Thornton* will only further erode the citizens' privacy rights as guaranteed by the Fourth Amendment.

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