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Comments: New York v. Belton and Its Expansion of the Search Incident to Arrest Exception to the Fourth Amendment Warrant Requirement

Michael G. Gallerizzo
University of Baltimore School of Law

NEW YORK v. BELTON AND ITS EXPANSION OF THE SEARCH INCIDENT TO ARREST EXCEPTION TO THE FOURTH AMENDMENT WARRANT REQUIREMENT

This article analyzes the Supreme Court's holding in New York v. Belton *and the expansion this decision has occasioned over the search incident to arrest exception to the fourth amendment warrant requirement. The author begins by tracing the development of the exception through various court decisions over the years. Thereafter,* Belton *is examined in the context of prior Supreme Court decisions which had been viewed as the precedential authority when dealing with searches incident to arrests. The article concludes with a comparison between* Belton's *holding pertaining to warrantless container searches and prior Supreme Court decisions addressing this subject area.*

I. INTRODUCTION

In *New York v. Belton,*[1] the United States Supreme Court defined the permissible scope of an automobile search incident to the lawful arrest of its recent occupants to include the passenger compartment of the vehicle and any opened or closed containers therein.[2] Prior to *Belton,* the Court had confined the permissible scope of the search incident exception[3] to encompass only the person of the arrestee and the area within the arrestee's immediate control.[4] Warrantless container searches were prohibited before the *Belton* decision unless the container was open or of a kind that did not exhibit a legitimate expectation of privacy.[5]

This comment traces the development of the search incident exception and the expansion of its permissible scope through Supreme Court decisions over the years. *Belton* is analyzed in the context of its

1. 453 U.S. 454 (1981).
2. *Id.* at 460-61.
3. In this comment, the search incident to arrest exception to the fourth amendment warrant requirement will be referred to as the search incident exception. This comment primarily deals with the warrantless searching of the area within an arrestee's control. For a discussion on warrantless searching of the arrestee's person, see C. WHITEBREAD, CRIMINAL PROCEDURE: AN ANALYSIS OF CONSTITUTIONAL CASES AND CONCEPTS § 6.01, at 133-35 (1980) [hereinafter cited as WHITEBREAD].
4. Chimel v. California, 395 U.S. 752, 763 (1969).
5. Arkansas v. Sanders, 442 U.S. 753, 762 (1979), *overruled in part,* United States v. Ross, 102 S. Ct. 2157 (1982); United States v. Chadwick, 433 U.S. 1, 13 n.8 (1977). *See* Robbins v. California, 453 U.S. 420 (1981) (plurality opinion), *rejected,* United States v. Ross, 102 S. Ct. 2157 (1982). *Robbins,* decided the same day as *Belton,* invalidated the warrantless search of two opaque trash bags found in the luggage compartment of a station wagon stopped pursuant to the automobile exception to the fourth amendment's warrant requirement. 453 U.S. at 428-29. The *Robbins* Court followed the same rationale as that used in *Chadwick* and *Sanders* to invalidate the search. *Id.* at 424-25.

predecessor, *Chimel v. California,*[6] a decision which narrowly interpreted the permissible scope of the search incident exception. This comparison is directed towards any change or expansion that *Belton* might occasion upon *Chimel's* holding. Moreover, additional emphasis is placed on any part of the *Belton* decision which may generate confusion with respect to the permissible scope of the search incident exception. After addressing *Belton's* impact on this exception, this comment then compares *Belton's* holding pertaining to warrantless container searches with prior decisions addressing this subject area.

II. THE HISTORICAL DEVELOPMENT OF THE SEARCH INCIDENT EXCEPTION

The fourth amendment to the United States Constitution[7] recognizes "[t]he right of people to be secure in their persons . . . and effects" from unreasonable searches.[8] The amendment was the colonists' response to the much-hated British writs of assistance and general warrants.[9] As a general rule, the Supreme Court has held that searches conducted without warrants are per se unreasonable under the fourth amendment, subject to a few specifically established exceptions.[10] One of the oldest exceptions to the fourth amendment warrant requirement is the search incident to a lawful arrest.[11] Although this exception had always been impliedly recognized under English and early American law,[12] its use was subject to various restrictions based on the two underlying justifications for the exception: the protection of police officers from possible injury, and the preservation of destructible evidence.[13]

Courts have focused upon three variables when considering the reasonableness of a search incident to arrest: (1) the proximity of the search to the arrest; (2) the geographic scope of the search; and (3) the intensity with which the search is conducted.[14] As a general rule, a

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6. 395 U.S. 752 (1969).
7. The fourth amendment was made applicable to the states through the fourteenth amendment. Wolf v. Colorado, 338 U.S. 25, 27-28 (1949).
8. U.S. CONST. amend. IV. The entire text of the fourth amendment provides:
   > The right of 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.

   Id.
9. *See* United States v. Chadwick, 433 U.S. 1, 7-8 (1977).
10. Katz v. United States, 389 U.S. 347, 357 (1967).
11. *See* WHITEBREAD, *supra* note 3, § 6.01, at 133.
12. See Weeks v. United States, 232 U.S. 383 (1914), where the Court stated: "[T]he right [of] . . . the Government, [has] always [been] recognized under English and American law, to search the person of the accused when legally arrested to discover and seize the fruits or evidence of [the] crime." *Id.* at 392.
13. *See* WHITEBREAD, *supra* note 3, § 6.01, at 133; *see also* Chimel v. California, 395 U.S. 752, 762-63 (1969).
14. *See* Note, *Warrantless Container Searches Under the Automobile and Search Inci-*

search must be contemporaneous to the arrest for it to be reasonable — a restriction that has remained virtually unchanged over time.[15] However, the geographic scope of the search incident exception and the intensity with which it may be conducted have experienced a great deal of change since the recognition of the exception by early English courts.

A limited right to utilize the search incident exception did exist at common law, as exhibited in the leading English decision of *Leigh v. Cole.*[16] However, the right to search was specifically qualified and depended on the circumstances of each case.[17] One commentator, Professor Bishop, interprets *Leigh's* holding as restricting the use of the search incident exception[18] to situations where the officer feared the arrestee might escape.[19] Other commentators, such as Pollock and Maitland, discuss the exception in more absolute terms observing that, at early common law, the right to search incident to arrest existed when the arrestee was captured while perpetrating the crime for which he was charged.[20] American courts have followed the observations of Pollock and Maitland[21] as well as common law decisions,[22] when explaining the origins of the search incident exception.

Three early twentieth century Supreme Court decisions form the foundation for the search incident exception in the United States. In *United States v. Weeks,*[23] *Carroll v. United States,*[24] and *Agnello v. United States,*[25] the Supreme Court recognized, in dicta, the existence of the search incident exception.[26] *Weeks,* the earliest of the three decisions, acknowledged a limited right to effectuate a warrantless search of

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dent Exceptions, 9 FORDHAM URB. L.J. 185, 187-88 (1980-81). Intensity refers to the types of items (specifically containers) which are searched. *Id.*

15. *See* Vale v. Louisiana, 399 U.S. 30, 33 (1970); Shipley v. California, 395 U.S. 818, 819 (1969); Stoner v. California, 376 U.S. 483, 486 (1964); Preston v. United States, 376 U.S. 364, 367 (1964). *But see* United States v. Edwards, 415 U.S. 800 (1974) (the Court found a warrantless search and seizure of a prisoner's clothing ten hours after he was arrested to be contemporaneous to the arrest). However, *Edwards* has been limited to settings where prison clothing is unavailable at the time of the arrest, and has been viewed not to have disturbed the contemporaneous requirement of the search incident exception. WHITEBREAD, *supra* note 3, § 6.04, at 138.
16. 6 COX CRIM. CAS. 329 (1853).
17. *Id.* at 332.
18. 1 J. BISHOP, NEW CRIMINAL PROCEDURE § 210, at 152 n.75 (2d ed. 1913).
19. *Id.* at 152.
20. 2 F. POLLOCK & F. MAITLAND, THE HISTORY OF ENGLISH LAW 579 (2d ed. 1968).
21. *See, e.g.,* United States v. Snyder, 278 F. 650, 653-54 (N.D.W. Va. 1922).
22. *See, e.g., id.* at 656. In United States v. Wilson, 163 F. 338, 340 (S.D.N.Y. 1908) (the court recognized the common law right to search an arrestee incident to his arrest).
23. 232 U.S. 383 (1914).
24. 267 U.S. 132 (1925).
25. 269 U.S. 20 (1925).
26. It is important to note that none of the three decisions involved an actual search incident to arrest situation. However, the Court specifically recognized the existence of the search incident exception in the United States during its analysis of

the "person" incident to arrest.[27] Eleven years later, in *Carroll,* the Court again recognized the right to the search incident exception, this time extending the right to include items found within the arrestee's control.[28] The Supreme Court in *Agnello* adopted the dicta from *Weeks* and *Carroll,* but extended the search incident exception to include the right to search the place where the arrest was consummated.[29]

Two years later, in *Marron v. United States,*[30] the Court upheld the search of an arrestee's premises when federal agents, while effectuating an arrest pursuant to a warrant, observed the arrestee committing another crime.[31] The Supreme Court, applying the dictum from *Agnello,* held that when the arrest is for an offense then occurring on the premises, the right to search extends to "all parts of the premises used for the unlawful purpose."[32]

In the years that followed, the search incident exception encountered a variety of interpretations by the Court. Initially, the Court intimated a very limited view of the exception, invalidating warrantless searches when the officer had sufficient time and information prior to the search to get a warrant.[33] Moreover, warrantless searches were generally invalidated when the arresting officer had not observed the crime for which the defendant was arrested.[34]

This restricted view of the search incident exception was abandoned in *Harris v. United States.*[35] The *Harris* Court based its test for judicial review of the exception on the reasonableness of the search, which in turn depended on the facts and circumstances of each case.[36] However, one year later, the Court implicitly overruled *Harris'* broad interpretation in *Trupiano v. United States,*[37] holding that whenever there exists ample time to secure a warrant, officers must do so before effectuating a search incident to an arrest.[38] *Trupiano's* holding was

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each case. Agnello v. United States, 269 U.S. 20, 30 (1925); Carroll v. United States, 267 U.S. 132, 158 (1925); United States v. Weeks, 232 U.S. 383, 392 (1914).

27. United States v. Weeks, 232 U.S. 383, 392 (1914).
28. Carroll v. United States, 267 U.S. 132, 158 (1925).
29. Agnello v. United States, 269 U.S. 20, 30 (1925).
30. 275 U.S. 192 (1927).
31. In *Marron*, federal agents had secured a warrant authorizing the seizure of liquor and certain articles used in its manufacture by the defendant. *Id.* at 193-94. When the agents arrived at the defendant's premises, they observed that the place was being used for retailing and on-premises consumption of intoxicating liquors. These activities were illegal during prohibition. *Id.* at 194. The agents, after arresting Marron, conducted a full search of the premises for items described in the warrant, and in the process, seized an incriminating ledger and other articles not specifically mentioned in the warrant. *Id.*
32. *Id.* at 199.
33. *See* Go-Bart Importing Co. v. United States, 282 U.S. 344, 357-58 (1931).
34. *See id.;* United States v. Lefkowitz, 285 U.S. 425, 465 (1932).
35. 331 U.S. 145 (1947), *overruled,* Chimel v. California, 395 U.S. 752, 760 (1969).
36. 331 U.S. at 150.
37. 334 U.S. 699 (1948).
38. *Id.* at 705. *Trupiano* is said to be one of the strongest expressions of the doctrine that warrantless searches are per se unreasonable. *See* W. RINGAL, SEARCHES &

laid to rest in *United States v. Rabinowitz*[39] when the Court returned to the rule it enunciated in *Harris*. The *Rabinowitz* Court noted that the relevant test for determining the validity of a search incident to an arrest, "is not whether it . . . [was] reasonable to procure a search warrant [as *Trupiano* suggested] but whether the search was reasonable . . . [which in turn] depends on the facts and circumstances . . . of each case."[40]

In 1969, the Supreme Court expressly overruled the *Rabinowitz-Harris* reasonableness rule in *Chimel v. California.*[41] In *Chimel,* the defendant was arrested, pursuant to a warrant, for the burglary of a coin store.[42] The officers who effectuated the arrest conducted a warrantless search of the defendant's home, attic, and garage looking for fruits or instrumentalities of the crime for which the defendant was charged. The search turned up numerous coins, which were used as evidence to convict the defendant on the burglary charge.[43] The Supreme Court reversed the conviction finding the scope of the search to be unreasonable under the fourth and fourteenth amendments, despite the lawful arrest.[44] The Court formulated a new rule which prescribed the permissible scope of the search incident exception. The *Chimel* rule stated that police could conduct warrantless searches incident to lawful arrests, but were limited to the search of the "arrestee's person and the area 'within [the arrestee's] immediate control'—construing that phrase to mean the area . . . [where] . . . [an arrestee] might gain possession of a weapon or destructible evidence."[45] This rule resulted from the Court's concern with the arrestee's access to weapons or destructible evidence during the arrest.[46]

Chimel had represented the law governing the permissible scope of the search incident exception prior to the Supreme Court's decision in *New York v. Belton.*[47] However, as the rest of this article suggests, the *Belton* decision seems to have disregarded the limitations of, and the justifications for, the rule that *Chimel* established.

SEIZURES, ARRESTS AND CONFESSIONS § 12.1 (2d. ed. 1979) [hereinafter cited as RINGAL].

39. 339 U.S. 56 (1950), *overruled,* Chimel v. California, 395 U.S. 752, 760 (1969).
40. 339 U.S. at 66.
41. 395 U.S. 752, 768 (1969).
42. *Id.* at 753-54.
43. *Id.* at 754.
44. *Id.* at 768.
45. *Id.* at 763. The Court, in overruling *Harris* and *Rabinowitz*, stated that neither decision was "founded on an unimpeachable line of authority." *Id.* at 760. Some commentators have viewed *Chimel* as a decision which overruled many years of precedent by severely restricting the right of police officers to conduct searches incident to arrests. *See, e.g.,* Carrington, *Chimel v. California — A Police Response,* 45 NOTRE DAME LAW. 559 (1970).
46. Chimel v. California, 395 U.S. 752, 763 (1969).
47. 453 U.S. 454 (1981). The Supreme Court, however, in two controversial decisions after *Chimel*, implemented a marked change in the rule governing the permissible scope of a search involving the arrestee's *person.* It is necessary to discuss these

III. THE FACTUAL CIRCUMSTANCES IN *NEW YORK v. BELTON*

On April 9, 1978 Trooper Nicot of the New York State Police

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cases because the *Belton* Court used the rationales emanating from them to justify its holding pertaining to container searches.

In United States v. Robinson, 414 U.S. 218 (1973) and Gustafson v. Florida, 414 U.S. 260 (1973), the Supreme Court held that an officer may search incident to an arrest the person of an arrestee and containers on his person even though the offense is of a kind that is unlikely to produce dangerous weapons or evidence of criminal conduct. United States v. Robinson, 414 U.S. 218, 235 (1973); Gustafson v. Florida, 414 U.S. 260, 265-66 (1973). In both cases, the arrests were based on traffic violations for which the officers properly effectuated full custodial arrests of the defendants. United States v. Robinson, 414 U.S. 218, 220-21 (1973); Gustafson v. Florida, 414 U.S. 260, 262 (1973). Before either officer transported his subject to the police station, he conducted a full search of the arrestee's person, with both searches turning up narcotics. The *Robinson* Court upheld the conviction of the defendant based on the narcotics seized even though the defendant was only arrested for a traffic violation. The Court reasoned that "[a] custodial arrest of a suspect based on probable cause is a reasonable intrusion under the fourth amendment; . . . [and that] a search incident to [that] arrest requires no additional justification." United States v. Robinson, 414 U.S. 218, 235 (1973). Although the *Robinson* Court recognized that the search incident exception was based on the need to disarm or to discover evidence, it dismissed the necessity for showing either of the two justifications when the search involved the person of the arrestee. *Id.* The *Gustafson* Court also upheld a conviction of the defendant based on the narcotics seized, following the same rationale as that used in *Robinson* to justify the search. Gustafson v. Florida, 414 U.S. 260, 263-66 (1973).

It is important to note that the *Robinson* and *Gustafson* decisions only dispensed with the necessity for showing the two justifications for the search incident exception when the search involved the person of the arrestee. The Court did not extend this rationale to searches involving the area within the arrestee's immediate control. *See* United States v. Chadwick, 433 U.S. 13, 16 n.10 (1977). This factor will have important significance when viewing the *Belton* Court's use of the *Robinson* rationale to justify the search of Roger Belton's jacket.

It is also necessary to discuss the automobile exception to the fourth amendment's warrant requirement because some of the case law contains analysis pertinent to the search incident exception. The automobile exception was first established in Carroll v. United States, 267 U.S. 132 (1925). *Carroll* outlined two requirements that must be shown before a warrantless search of an automobile will be reasonable. First, the officers must have probable cause to believe the vehicle contains contraband or evidence of a crime. *Id.* at 153. Second, exigency due to the mobility inherent in an automobile must be present. *Id.*; *see* C. Moylan, *The Automobile Exception: What It Is and What It Is Not—A Rationale in Search of a Clearer Label,* 27 MERCER L. REV. 987, 993 (1976) (illustrating later cases that more fully exhibit the exigency requirement of the automobile exception). The *Carroll* Court's justification for allowing searches of automobiles, based upon probable cause and exigency, rests on the inherently mobile nature of the vehicle. Carroll v. United States, 267 U.S. 132, 153 (1925). Chambers v. Maroney, 399 U.S. 42 (1970) extended the automobile exception to allow the warrantless searching of impounded vehicles at a police station when officers had a right, pursuant to the automobile exception, to search the vehicle at the place where it was stopped. *Id.* at 52.

The warrantless searching of containers pursuant to the search incident or automobile exceptions was frequently sustained prior to the Supreme Court's decisions in United States v. Chadwick, 433 U.S. 1 (1977) and Arkansas v. Sanders, 442 U.S. 753 (1979), *overruled in part,* United States v. Ross, 102 S. Ct. 2157

stopped an automobile on a New York thruway for traveling at an ex-

(1982). *See* United States v. Frick, 490 F.2d 666 (5th Cir. 1973) (sustained a search of an attache case found in the arrestee's car as incident to a lawful arrest), *cert. denied,* 419 U.S. 831 (1974); United States v. Halliday, 487 F.2d 1215 (5th Cir. 1973) (sustained a search of thirty-one boxes inside a trailer pursuant to the *Carroll* exception), *reh'g denied,* 488 F.2d 552 (1974); United States v. Evans, 481 F.2d 990 (9th Cir. 1973) (sustained a search of a footlocker inside an arrestee's car pursuant to the *Carroll* exception); United States v. Mehciz, 437 F.2d 145 (9th Cir.) (sustained a search of an arrestee's brief case as a proper search incident to a lawful arrest), *cert. denied,* 402 U.S. 974 (1971).

A number of courts, relying on the search incident exception, sustained the warrantless searching of containers even when the possibility of the arrestee's gaining possession of a weapon or destructible evidence appeared remote. *See* Comment, *Broadening the Scope of a Search Incident to Custodial Arrest: The Burger Court's Retreat from Chimel,* 24 EMORY L.J. 151, 167 (1975); *see also* United States v. Lewis, 556 F.2d 385 (6th Cir. 1977) (sustained the warrantless search of a suitcase after it was taken from the arrestee's possession and while the arrestee was handcuffed), *cert. denied,* 434 U.S. 1011 (1978); United States v. Ciotti, 469 F.2d 1204 (3d Cir. 1972) (sustained the warrantless search of a briefcase after it was taken from the arrestee's possession and while the arrestee was handcuffed), *vacated on other grounds,* 414 U.S. 1151 (1974); United States v. Wysocki, 457 F.2d 1155 (5th Cir. 1972) (sustained the warrantless search of a box found in a closet six feet from the arrestee).

Both *Chadwick* and *Sanders,* however, substantially limited the right to search containers pursuant to either the search incident or automobile exception. *Chadwick* invalidated a warrantless search of a double-locked footlocker which took place at a federal building an hour-and-a-half after the owner was arrested at a train station. United States v. Chadwick, 433 U.S. 1, 15 (1977). This search took place after federal agents had secured the footlocker, pursuant to the automobile exception, from the trunk of Chadwick's automobile. *Id.* at 3-4. The footlocker was then transported to a federal building and searched without either a warrant or the defendant's consent. *Id.* at 5. The Supreme Court invalidated the search finding that "luggage [and other containers] . . . [are] repositor[ies] of personal effects," *id.* at 13, exhibiting a reasonable expectation of privacy which the fourth amendment protects against warrantless governmental intrusions. *Id.* at 6-7. Moreover, the Court declined to accept the contention that the automobile exception should, by analogy, apply to a footlocker and other containers which are mobile. *Id.* at 13. The Court found the automobile exception to be based on the diminished expectation of privacy surrounding an automobile, whereas a much greater expectation of privacy existed in personal luggage and other containers. *Id.*

Using the same rationale as it did in *Chadwick*, the Supreme Court in Arkansas v. Sanders, 442 U.S. 753 (1979), *overruled in part*, United States v. Ross, 102 S. Ct. 2157 (1982), invalidated the search of a suitcase obtained from the trunk of an automobile pursuant to the automobile exception. 442 U.S. at 755. In *Sanders*, officers had probable cause to believe that a suitcase in the trunk of a taxi they were following contained marihuana. *Id.* The officers stopped the vehicle, instructed the taxi driver to open the trunk, and without a warrant or the owner's consent, opened the unlocked suitcase discovering over nine pounds of marihuana. *Id.* The Court reaffirmed its holding in *Chadwick*, recognizing that luggage and other containers are common repositories for one's personal effects. *Id.* at 762. The Court noted that such containers are inevitably associated with a reasonable expectation of privacy, and therefore are protected by the fourth amendment from warrantless governmental intrusions. *Id.* While *Sanders* denied the use of the automobile exception as a blanket justification for searching containers in a vehicle, the Supreme Court did acknowledge that such searches would be permitted when the container exhibited a diminished expectation of pri-

cessive rate of speed.[48] The car was occupied by four men, one of whom was Roger Belton. After asking for the driver's license and registration, the officer discovered that none of the occupants owned the vehicle or was related to its owner. Meanwhile, Trooper Nicot smelled burnt marihuana emanating from the passenger compartment and spotted an envelope on the floor of the vehicle marked "super gold."[49] The officer then instructed the four men to get out of the vehicle, and placed them under arrest for illegal possession of marihuana.[50] Trooper Nicot read the arrestees their *Miranda*[51] warnings and searched each of them. He then proceeded to search the passenger compartment of the vehicle, finding on the back seat a black leather jacket with zippered pockets that belonged to Belton. The trooper unzipped one of the pockets and discovered a packet of cocaine inside.[52] Upon this evidence Belton was indicted for illegal possession of a controlled substance. At trial, Belton's motion to suppress the evidence of cocaine was denied.[53] On appeal, the Appellate Division of the New York Supreme Court upheld the constitutionality of the search and seizure.[54] The New York Court of Appeals reversed, finding the search of Belton's jacket to be unconstitutional.[55]

IV. THE *BELTON* DECISION

In *New York v. Belton,*[56] the primary issue before the Supreme Court was the constitutionally permissible scope and intensity of a warrantless search incident to a lawful custodial arrest of the recent occupant of an automobile.[57] Acknowledging the justifications for the search incident exception, the Court turned to *Chimel v. California,*[58] recognizing it to be the governing authority for the permissible scope of such warrantless intrusions.[59] The majority found that although the

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vacy. *Id.* at 764 n.13. The Court gave the following examples of the kinds of containers which would exhibit a diminished expectation of privacy: a kit of burglar tools, gun cases, open packages, open luggage, or any container which would, by its outward appearance, reveal its contents to plain view. *Id.*

48. New York v. Belton, 453 U.S. 454, 455 (1981).
49. *Id.* at 455-56. The officer associated this envelope with marihuana. *Id.*
50. Subsequent to the arrest, the officer patted each man down and split them into four separate areas of the freeway where they could not touch each other. *Id.* at 456. The officer then picked up the envelope marked "super gold" from the floor of the vehicle and discovered that it contained marihuana. *Id.*
51. Miranda v. Arizona, 384 U.S. 436 (1966).
52. New York v. Belton, 453 U.S. 454, 456 (1981).
53. *Id.* Belton pleaded guilty to a lesser offense of possession of marihuana, preserving for appeal his claim that the cocaine had been seized in violation of his fourth and fourteenth amendment rights.
54. *Id.*
55. *Id.*
56. 453 U.S. 454 (1981).
57. *Id.* at 457.
58. 395 U.S. 752 (1969).
59. New York v. Belton, 453 U.S. 454, 457-58 (1981). For a discussion of the permis-

Chimel rule could be simply stated, its application had given courts some difficulty because the rule allowed for varied interpretations.[60] The Court found a better approach in the writings of La Fave who suggested that specific rules (which instruct officers beforehand as to the propriety of a warrantless search) afford more fourth amendment protection.[61] Therefore, the Court set out to formulate a "bright-line rule"[62] which would guide officers in their encounters with the search incident exception.

United States v. Robinson[63] was the first case the Supreme Court turned to, commending that decision for establishing a straightforward rule regarding the search of a person incident to arrest. The Court found that the rule in *Robinson* could be predictably enforced by law enforcement officials and easily applied by the courts.[64] However, the Court noted that no straightforward rule, like that in *Robinson,* had emerged from the cases litigated on the permissible scope of a search involving the area within the arrestee's control.[65]

In an attempt to formulate such a rule, the *Belton* majority interpreted the scope of the area within the arrestee's control to include the passenger compartment of an automobile when the arrestee was its re-

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sible scope of the search incident exception as set forth in *Chimel*, see *supra* notes 41-47 and accompanying text.

60. New York v. Belton, 453 U.S. 454, 458 (1981).

61. La Fave, *"Case-by-Case Adjudication" versus "Standardized Procedures": The Robinson Dilemma,* 1974 SUP. CT. REV. 127, 142. La Fave suggests that: "[the protections of the fourth amendment] can only be realized if the police are acting under a set of rules which, in most instances, makes it possible to reach a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement." *Id.*

62. This is how the dissenting opinion labels the rule established by the majority. New York v. Belton, 453 U.S. 454, 463 (1981) (Brennan, J. and Marshall, J., dissenting).

63. 414 U.S. 218 (1973).

64. New York v. Belton, 453 U.S. 454, 459 (1981). The rule enunciated in United States v. Robinson, 414 U.S. 218 (1973), provides that in the case of a lawful custodial arrest, the full warrantless search of the arrestee's person is reasonable under the fourth amendment. *Id.* at 235. The *Robinson* Court rejected the contention that each case must litigate the question of whether one of the two justifications for the search incident exception is present. *Id.* However, the *Robinson* Court refused to extend this holding to include the area within an arrestees' immediate control. *See supra* note 47.

65. Prior to *Belton*, the permissible scope of the search incident exception when an automobile was involved seemed an unresolved question. This fact is illustrated by the many inconsistent federal court decisions on the subject. Holdings in such cases as United States v. Sanders, 631 F.2d 1309 (8th Cir. 1980), *cert. denied,* 449 U.S. 1127 (1981); United States v. Dixon, 558 F.2d 919 (9th Cir. 1977), *cert. denied,* 434 U.S. 1063 (1978); and United States v. Frick, 490 F.2d 666 (5th Cir. 1973), *cert. denied,* 419 U.S. 831 (1974), upheld the warrantless search of an automobile incident to a lawful arrest, while holdings in such cases as United States v. Benson, 631 F.2d 1336 (8th Cir. 1980), *vacated,* 453 U.S. 918 (1981); and United States v. Rigales, 630 F.2d 364 (5th Cir. 1980), invalidated such searches under comparable factual circumstances.

cent occupant.[66] Accordingly, the *Belton* Court ruled that when police officers effectuate a lawful custodial arrest of a recent occupant of an automobile they may search, contemporaneously therewith, the passenger compartment of the vehicle without a warrant.[67] Following from this conclusion the *Belton* Court also ruled that police officers may search the contents of any opened or closed containers within the passenger compartment, noting that an arrestee who can reach the passenger compartment of a vehicle can also reach containers therein.[68] The majority stated that "the justification for the search [of containers] is not that the arrestee has no privacy interest [in them] . . . , but that the lawful custodial arrest justifies the infringement of any privacy interest the arrestee may have."[69]

Rejecting the contention that some containers might be of the kind that could neither hold a weapon nor evidence of the arrestee's criminal conduct, the Court adhered to the *Robinson* rationale that "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."[70] Applying its "bright-line rule," the Supreme Court upheld the search of Belton's jacket.[71]

A strong dissenting opinion was delivered by Justices Brennan and

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66. New York v. Belton, 453 U.S. 454, 460 (1981). The Court's rationale for allowing the search of the passenger compartment, incident to a lawful arrest of its recent occupant, was because its "reading of the cases [including *Chimel*] . . . [suggested] that articles inside the relatively narrow compass of [a] passenger compartment . . . [were] within 'the area into which an arrestee might reach in order to grab a weapon or evidentiary item.' " *Id.*

67. *Id.*

68. *Id.* at 460-61. The Court noted that containers included "any object capable of holding another object. It thus 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 460-61 n.4. The Court did note, however, that its holding did not extend to the trunk of an automobile. *Id.*

69. *Id.* at 461. The Court analogized the search of containers in a passenger compartment of an automobile to the type of search that Chimel found permissible — the search of "drawers within the arrestee's reach," where the arrestee might obtain a weapon or destructible evidence. *Id.*

70. *Id.* (quoting United States v. Robinson, 414 U.S. 218, 235 (1973)).

71. New York v. Belton, 453 U.S. 454, 462-63 (1981). Two concurring opinions were delivered in *Belton*, one by Justice Rehnquist and one by Justice Stevens. Justice Rehnquist concurred in the majority's opinion because the Court was unwilling to overrule its decision in Mapp v. Ohio, 367 U.S. 643 (1961), and because the Court did not consider this case in the context of the automobile exception. New York v. Belton, 453 U.S. 454, 463 (1981) (Rehnquist, J., concurring). Justice Stevens concurred in the majority's holding for the same reasons he stated in his dissenting opinion in Robbins v. California, 453 U.S. 420, 444 (1981) (plurality opinion) (Stevens, J., dissenting), *rejected,* United States v. Ross, 102 S. Ct. 2157 (1982). New York v. Belton, 453 U.S. 454, 463 (1981) (Stevens, J., concurring).

Marshall.[72] The dissenters argued that the majority, in attempting to formulate a "bright-line rule," turned their backs on the underlying policy justifications of *Chimel,*[73] and therefore, greatly expanded the permissible scope of the search incident exception with neither the precedential basis nor factual background to justify their conclusions.[74] Justices Brennan and Marshall found the majority's expansion of *Chimel* both analytically unsound and inconsistent with prior Supreme Court decisions addressing the permissible scope for searching the area within the arrestee's control.[75] In closing, the dissenters noted that the majority's holding left many unanswered questions, and more importantly, "because the Court's new rule abandons the justifications underlying *Chimel,* it offers no guidance to . . . [police officers] seeking to work out these answers for [themselves]."[76]

V. *BELTON'S* EXPANSION OF THE *CHIMEL* DOCTRINE

The Supreme Court's decision in *New York v. Belton,*[77] manifests the Court's strong desire to establish a "bright-line rule" prescribing the permissible scope and intensity[78] of the search incident exception when the arrest involves the recent occupant of an automobile. The rule that *Belton* elucidates is that an officer may search, incident to the lawful custodial arrest of the *recent occupants* of an automobile, the *passenger compartment* of the vehicle, and *any open or closed containers therein.*[79] The opinion demonstrates the Court's attempt at making law enforcement more efficient by establishing standardized criteria for officers to relate to when confronted with search incident situations involving a vehicle.[80] Although this underlying basis is not without merit, the rule that *Belton* expounds disregards the Court's past asser-

72. New York v. Belton, 453 U.S. 454, 463 (1981) (Brennan, J. and Marshall, J., dissenting).
73. *Id.* at 463.
74. *Id.* at 466.
75. *Id.* at 468. The dissenters noted that prior case law had demonstrated that the crucial question under *Chimel* was "not whether the arrestee could ever have reached the area that was searched, but whether the arrestee could have reached it at the time of the arrest and search." *Id.* at 469. If the arrestee could not have reached the area searched at the time of the arrest, then a warrantless search of that area was impermissible. *Id.*
76. *Id.* at 469-70. *See infra* note 82 and accompanying text.
77. 453 U.S. 454 (1981).
78. Scope refers to the area within which a search incident to a lawful arrest may be conducted. Intensity pertains to what may be searched in the permissible area of the search incident exception, specifically referring to containers that are either closed or open. *See* Note, *Warrantless Container Searches Under the Automobile and Search Incident Exceptions,* 9 FORDHAM URB. L.J. 185, 187-88 (1980-81).
79. New York v. Belton, 453 U.S. 454, 460-61 (1981) (emphasis added).
80. *See supra* note 61 and accompanying text. Although the *Belton* Court does not specifically so state, it may be assumed that its holding only extends to vehicles and not to situations where an arrestee was the recent occupant of a dwelling. This assumption is based on the terminology used in the *Belton* decision, and on the Court's prior determination that automobiles exhibit a diminished expectation

tions,[81] while leaving open an aftermath of unanswered questions[82] which will undoubtedly incite a multitude of litigation that *Chimel's* holding may not have provoked.

Prior to the *Belton* decision, both federal and state courts were inconsistent in their holdings as to whether the prescriptions in *Chimel* encompassed the search of the interior of an automobile when the arrestees were its recent occupants.[83] The *Belton* Court has attempted to alleviate this conflict by establishing its "bright-line rule"; however, in the process it appears that the Court did not remain altogether faithful to either the limitations that *Chimel* fashioned or to the strictures that the fourth amendment commands on the subject.[84] Although the *Belton* Court claims that it left *Chimel* and its underlying principles intact,[85] its holding, on its face, exhibits a marked disregard for the limitations of, and the justifications for, the rule that *Chimel* established.

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of privacy. *See* United States v. Chadwick, 433 U.S. 1, 12-13 (1977); *see also* WHITEBREAD, *supra* note 3, § 7.03, at 145-46.

81. See Mincey v. Arizona, 437 U.S. 385 (1978), where the Court stated: "[t]he mere fact that law enforcement may be made more efficient can never by itself justify disregard of the fourth amendment." *Id.* at 393.

82. *See* New York v. Belton, 453 U.S. 454, 469-70 (1981) (Brennan, J. and Marshall, J., dissenting). The dissenters elaborate on many of the unanswered questions the *Belton* decision incites, some of which include:

> [H]ow long after the suspect's arrest . . . may [the search] validly be conducted[?] [F]ive minutes after the . . . [suspect's arrest]? Thirty minutes? Three hours? Does it matter whether the suspect is standing in close proximity to the car when the search is conducted? [W]hat is meant by 'interior' [of the car]? Does it include locked glove compartments, . . . interior . . . door panels . . . [areas] under the floor boards?

Id. Judging from the *Belton* decision, it seems that any kind of container in a vehicle may be searched regardless of its location or inability to hold a weapon or evidentiary item.

83. For an example of federal court inconsistencies, *compare* United States v. Sanders, 631 F.2d 1309 (8th Cir. 1980) (upholding the search of a passenger compartment of an automobile incident to the arrest of its recent occupant), *cert. denied,* 449 U.S. 1127 (1981) *and* United States v. Dixon, 558 F.2d 919 (9th Cir. 1977) (same), *cert. denied,* 434 U.S. 1063 (1978) *and* United States v. Frick, 490 F.2d 666 (5th Cir. 1973) (same), *cert. denied,* 419 U.S. 831 (1974) *with* United States v. Benson, 631 F.2d 1336 (8th Cir. 1980) (invalidating the search of a passenger compartment when the arrestee was its recent occupant), *vacated,* 453 U.S. 918 (1981) *and* United States v. Rigales, 630 F.2d 364 (5th Cir. 1980) (same).

For an example of state court inconsistencies, *compare* Hinkel v. Anchorage, 618 P.2d 1069 (Alaska 1980) (upholding the search of a passenger compartment of an automobile incident to the arrest of its recent occupant) *with* Ulesky v. Florida, 379 So. 2d 121 (Fla. App. 1979) (invalidating the search of the passenger compartment of an automobile when the arrestee was its recent occupant).

84. *See supra* notes 41-47 and accompanying text.

85. *See* New York v. Belton, 453 U.S. 454, 463 n.3 (1981), where the Court states: "[o]ur holding today does no more than determine the meaning of *Chimel's* principles in this particular and problematic context. 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.*

The *Chimel* rule,[86] designed to protect arresting officers and to preserve destructible evidence,[87] placed a temporal and spatial limitation on the search incident exception, excusing noncompliance with the fourth amendment warrant requirement only when the search was substantially contemporaneous with the arrest,[88] and confined to an area where the arrestee might lunge, reach or grab for a weapon or destructible evidence.[89] The *Belton* Court endeavors to expand the *Chimel* rule by enlarging both the spatial and temporal limitations that *Chimel* prescribed.

Belton first expands the spatial limitations of *Chimel* by finding "the area 'within the . . . [arrestee's] immediate control' " to encompass the passenger compartment of an automobile that an arrestee recently occupied.[90] The majority interprets the interior of a vehicle, in all situations, to be within the lunge, reach or grasp of an arrestee.[91] Although under certain limited circumstances this assumption might be valid,[92] in most situations when the arrestee has been taken out of the vehicle and arrested it is almost impossible to perceive how he could gain access back into the vehicle to obtain a weapon or destructible evidence while under the close watch and restraint of armed law enforcement officials.[93] Therefore, the *Belton* Court has established a dangerous precedent to be uniformly applied by officers and the courts, when in many instances, the Court's justification for allowing the search of the passenger compartment will not be present. Moreover, by allowing officers to search the interior of an automobile, regardless of whether the arrestee could actually reach a weapon or evidentiary item, the Court is permitting inexcusable noncompliance with the fourth amendment and completely disregarding the justifications for the rule

86. *See supra* notes 41-47 and accompanying text.
87. Chimel v. California, 395 U.S. 752, 763 (1969).
88. *See* Shipley v. California, 395 U.S. 818, 819 (1969); Preston v. United States, 376 U.S. 364, 367 (1964); Stoner v. California, 376 U.S. 483, 486 (1964).
89. *See* United States v. Chadwick, 433 U.S. 1, 14-15 (1977).
90. New York v. Belton, 453 U.S. 454, 460 (1981).
91. This statement is interpreting *Belton* in the context of *Chimel*. *See* Chimel v. California, 395 U.S. 752, 763 (1969).
92. It is not entirely impossible to believe that a factual situation could arise where the arrestee is able to lunge into the interior of the car, thereby obtaining a weapon or evidentiary item. For instance, a situation could occur where the arrestee has not been handcuffed and is standing by an open door of the vehicle and the weapon or evidentiary item is within reach on the front seat. However, the frequency in which such a factual situation would arise seems, at best, remote.
93. One commentator has severely criticized such an extension of *Chimel* while recognizing that lower courts, which had not been enthusiastic about *Chimel's* limitations, responded to the spatial restriction by viewing "every arrestee as a combination acrobat and Houdini who might well free himself from his restraints and suddenly gain access to some distant [and logically unreachable] place." 2 W. LAFAVE, SEARCH AND SEIZURE, A TREATISE ON THE FOURTH AMENDMENT § 6.3, at 414 (1978). For instance, when the doors of a vehicle are closed, or when the arrestee is handcuffed or a good distance from the vehicle, his gaining access back into the vehicle to obtain a weapon or evidentiary item seems a remote possibility.

that *Chimel* established.[94]

The facts in *Belton* also make it clear that the Court substantially expanded the *Chimel* rule, upholding a search into areas that the arrestees, at most, only had a remote chance to reach. The facts illustrate that all of the arrestees must have been some distance from the vehicle at the time of the arrest, making it almost impossible for them to lunge into the interior of the vehicle without first being restrained by Officer Nicot.[95] Even a broad interpretation of *Chimel*'s holding would not permit the use of the search incident exception under these circumstances.[96]

Although some lower courts, prior to *Belton,* had upheld the search of a passenger compartment of an automobile incident to the arrest of its recent occupant,[97] many had done so relying on other exceptions to the warrant requirement,[98] such as plain view,[99] to justify the search. No Supreme Court decison, after *Chimel,* had ever extended the permissible scope of the search incident exception to include the passenger compartment of a vehicle. Therefore, the Supreme Court in *Belton* has expanded the spatial limitation that *Chimel* prescribed for the search incident exception, with neither the factual circumstances[100]

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94. *See* Chimel v. California, 395 U.S. 752 (1969) where the Court stated, "we cannot be true to [the fourth amendment] and excuse the absence of a search warrant without a showing by those who seek exemption from the constitutional mandate that the exigencies of the situation make the course imperative." *Id.* at 763 (quoting McDonald v. United States, 335 U.S. 451, 456 (1948)).

95. *See supra* note 50 and accompanying text.

96. *See* Chimel v. California, 395 U.S. 752 (1969), where the Court exhibited a recusant attitude towards the searching of areas that the arrestee only had a remote chance of reaching:

> No consideration relevant to the [f]ourth [a]mendment suggests any point of rational limitation once the search is allowed to go beyond the area from which the . . . [arrestee] might obtain weapons or evidentiary items. *The only reasoned distinction is one between a search of the person arrested and the area within his reach on the one hand, and more extensive searches on the other.*

Id. at 766 (footnotes omitted) (emphasis added).

97. *See* United States v. Sanders, 631 F.2d 1309 (8th Cir. 1980), *cert. denied,* 449 U.S. 1127 (1981); United States v. Dixon, 558 F.2d 919 (9th Cir. 1977), *cert. denied,* 434 U.S. 1063 (1978); United States v. Frick, 490 F.2d 666 (5th Cir. 1973), *cert. denied,* 419 U.S. 831 (1974). *But see* United States v. Benson, 631 F.2d 1336 (8th Cir. 1980), *vacated,* 453 U.S. 918 (1981); United States v. Rigales, 630 F.2d 364 (5th Cir. 1980).

98. *See, e.g.,* United States v. Sanders, 631 F.2d 1309 (8th Cir. 1980), *cert. denied,* 449 U.S. 1127 (1981).

99. See WHITEBREAD, *supra* note 3, § 11.01, at 211-26 for a good discussion of the plain view exception to the fourth amendment warrant requirement.

100. The *Chimel* Court recognized that it is the factual circumstances of each case that determines if a search is reasonable. The Court stated: " '[t]he recurring questions of reasonableness of searches' depend upon 'the facts and circumstances — the total atmosphere of the case'. . . . Those facts and circumstances must be viewed in light of established [f]ourth [a]mendment principles." Chimel v. California, 395 U.S. 752, 765 (1969) (citations omitted). This language from *Chimel* also implies that the *Chimel* Court would not approve of a uniform rule, like that estab-

nor the precedential case law[101] to justify its holding.

Belton's expansion of the *Chimel* rule to include the passenger compartment of a vehicle also invites many questions pertaining to what the search of the interior compartment may encompass. Can officers search areas under the seats, behind the dashboards or inside the door panels? By broadly stating that officers may search "the passenger compartment,"[102] and by failing to prescribe any limitations on such a search, the court has left it for law enforcement officials to determine, in their discretion, whether such a search is reasonable.[103] Such *ad hoc* determinations are clearly prohibited by the fourth amendment and Supreme Court decisions enforcing it.[104] Therefore, the *Belton* Court's attempt to afford more constitutional protection to arrestees through a "bright-line rule" failed on its own terms by permitting law enforcement officials to make discretionary decisions concerning a search incident to an arrest.

The second limitation of *Chimel* that *Belton* expands is the temporal restriction. *Chimel* recognized that in order for a warrantless search to be valid, it had to be substantially contemporaneous in time and place with the arrest.[105] Although some lower federal courts had liberally construed *Chimel's* contemporaneous requirement,[106] the Supreme Court had adhered to the stricter standard established in *Chimel* invali-

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lished in *Belton*, which purports to apply regardless of the factual circumstances of each case. *See also* Terry v. Ohio, 392 U.S. 1, 19 (1968) (finding the reasonableness of a search incident to arrest to depend upon the factual circumstances of each case); Sibron v. New York, 392 U.S. 40, 59 (1968) (same); Preston v. United States, 376 U.S. 364, 369 (1964) (same).

101. No Supreme Court decision after *Chimel* had ever permitted a search as extensive as that in *Belton*.

102. New York v. Belton, 453 U.S. 454, 460 (1981).

103. It is unclear whether a search of the areas under the seats, behind the dashboard, or inside the door panels would be considered reasonable. The limitations of Chimel v. California, 395 U.S. 752, 763 (1969), would prohibit the search of these areas under such circumstances. Whether under *Belton* such a search would be allowed remains to be seen.

104. See United States v. Chadwick, 433 U.S. 1, 9 (1977), where the Court recognized that one of the purposes of the fourth amendment is to protect against *ad hoc* determinations by officers as to whether they should or should not search. The Court in *Chadwick* stated that: "The judicial warrant has a significant role to play in that it provides the detached scrutiny of a neutral magistrate, which is a more reliable safeguard against improper searches than the hurried judgment of a law enforcement officer, 'engaged in the often competitive enterprise of ferreting out crime.'" *Id.*

105. Chimel v. California, 395 U.S. 752, 764 (1969).

106. *See* United States v. Wyatt, 561 F.2d 1388 (4th Cir. 1977) (upheld a search five minutes after an arrest as substantially contemporaneous); United States v. Johnson, 561 F.2d 832 (D.C. Cir.), *cert. denied,* 432 U.S. 907 (1977) (upheld the search of the premises after the arrestees had been constrained); United States v. Mason, 523 F.2d 1122 (D.C. Cir. 1975) (upheld the search of a suitcase found in a closet in the same room where the arrestee stood handcuffed). *But see* United States v. Berenguer, 562 F.2d 206 (2d Cir. 1977) (arrestee shackled to a bed, search of his billfold not incident to arrest); United States v. Mapp, 476 F.2d 67 (2d Cir. 1973) (arrestee surrounded by six officers; search of a closet not incident to arrest);

dating all searches remote in time or place to the arrest.[107] However, the *Belton* decision permits an officer to search the passenger compartment of an automobile incident to the arrest of the automobile's "recent occupant."[108] The Court's use of the phrase "recent occupant," coupled with its failure to prescribe any limitations for the application of this terminology,[109] intimates an expansion of the contemporaneous requirement that *Chimel* dictated. *Chimel's* temporal restrictions only permitted the search of the area where the arrest occurred if the search was conducted immediately after the arrest, and if the arrestee was present in the area desired to be searched.[110] The *Belton* standard of "recent occupant" may allow searches far more remote in time and place than the strictures in *Chimel* would permit.[111] Although subsequent case interpretation may limit the "recent occupant" terminology,

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United States v. Baca, 417 F.2d 103 (10th Cir. 1969) (arrestee handcuffed, search of area where arrested invalid).

107. *See* United States v. Chadwick, 433 U.S. 1, 15 (1977); Vale v. Louisiana, 399 U.S. 30, 33 (1970); Stoner v. California, 376 U.S. 483, 486 (1964); Preston v. United States, 376 U.S. 364, 367 (1964). *But see* United States v. Edwards, 415 U.S. 800 (1974); *supra* note 15 and accompanying text.

The Supreme Court in Arkansas v. Sanders, 442 U.S. 753 (1979), *overruled in part,* United States v. Ross, 102 S. Ct. 2157 (1982), while not addressing a search incident situation, affirmed its recognition of the strict contemporaneous requirement of *Chimel* when it stated, in dictum, that the area of control for the purposes of the search incident exception is that area within the reach of the arrestee at the time of the search, and not the area within the arrestee's reach at the time of arrest. 442 U.S. at 763 n.11. This language implies that the Supreme Court, until *Belton*, had not sanctioned searching an area where an arrest took place, if the search was remote in time to the arrest or was conducted in an area the arrestee could not possibly have reached at the time of the search. Moreover, it would seem that the Court in *Sanders* would not have sanctioned the search that took place in *Belton* because *Belton* permitted a search into areas (the passenger compartment of a vehicle) and containers that the arrestees could not possibly have reached at the time of the search. The language in *Sanders* also implies that the Court would not sanction the search of an area where the arrest took place if the arrestee had been handcuffed, placed in a police car or removed in some way from the area desired to be searched. *But see supra* note 106 and accompanying text (showing that some lower federal courts have upheld such searches).

108. New York v. Belton, 453 U.S. 454, 460 (1981).

109. The *Belton* Court failed to establish any time constraints limiting the phrase "recent occupant." For example, how long after the arrest of an occupant of a vehicle will the occupant still be considered a recent occupant; 5 minutes after?, an hour after? The Court also failed to give any limitation concerning how far the arrestee can be moved before the right to search the passenger compartment would be lost.

110. Chimel v. California, 395 U.S. 752, 764 (1969).

111. The term "recent occupant" implies a far more liberal standard than the contemporaneous requirement of *Chimel*. A broad interpretation of this terminology may allow a search of the passenger compartment after the arrestee is handcuffed, or a good distance from the vehicle, or even in situations when the arrestee has been placed in a police car. Under all of these examples the arrestee could still be considered a recent occupant of the vehicle. Therefore, since *Chimel's* standards would not permit a search under the aforementioned examples, it is a logical conclusion that the *Belton* decision has substantially expanded the contemporaneous requirement prescribed in *Chimel*.

for the time being *Belton* appears to have substantially expanded the contemporaneous requirement that *Chimel* prescribed.

VI. *BELTON'S* HOLDING WITH RESPECT TO CONTAINER SEARCHES

A third area that *Belton* has expanded the search incident exception to include is the search of open or closed containers in the passenger compartment of a vehicle an arrestee had recently occupied.[112] The *Belton* majority bases this holding on *Chimel's* assertion that officers could search drawers that were in front of the arrestee at the time of the arrest,[113] and on the rationale of *United States v. Robinson*[114] which allows the search of containers found on the person of the arrestee at the time of the arrest.[115] The Court dispenses with the argument that arrestees have a legitimate expectation of privacy in containers inside the passenger compartment of their vehicles[116] by stating that a "lawful custodial arrest justifies the infringement of any privacy interest the arrestee may have."[117] *Belton* completely disregards the existing law on the subject of vehicle container searches established in *United States v. Chadwick,*[118] *Arkansas v. Sanders,*[119] and *Robbins v. California.*[120]

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112. New York v. Belton, 453 U.S. 454, 460-61 (1981).
113. Chimel v. California, 395 U.S. 752, 763 (1969).
114. 414 U.S. 218 (1973).
115. *Id.* at 236.
116. See Rakas v. Illinois, 439 U.S. 128, 143 n.12 (1978), where the Supreme Court recognized that one who owns or possesses property may retain a legitimate expectation of privacy in that property.
117. New York v. Belton, 453 U.S. 454, 461 (1981).
118. 433 U.S. 1 (1977).
119. 442 U.S. 753 (1979), *overruled in part,* United States v. Ross, 102 S. Ct. 2157 (1982).
120. 453 U.S. 420 (1981) (plurality opinion), *rejected,* United States v. Ross, 102 S. Ct. 2157 (1982). *Robbins* involved an auto search subsequent to a *Carroll* stop. Having probable cause to believe the defendant's vehicle contained marihuana, the police searched it finding a small quantity of marihuana and paraphernalia associated with its use. 453 U.S. at 422. After placing the defendant in the patrol car, the officers searched the tailgate of the defendant's station wagon finding, in the luggage compartment, two sealed opaque trash bags which they opened and found to contain thirty pounds of marihuana. The Supreme Court invalidated the search adhering to its decisions in *Chadwick* and *Sanders*, which held that a defendant has a legitimate expectation of privacy interest in containers likely to hold personal effects, whether found in an automobile or some other place, and therefore such containers could not be searched without a warrant. *Id.* at 424-25. The *Robbins* Court found these two opaque trash bags to constitute closed containers which exhibited the defendant's legitimate expectation of privacy. *Id.* at 428-29. Therefore, the Court held that once the officers took the containers under their exclusive control, they could not validly search them without a warrant. *Id.*

Since this comment was written, the Supreme Court decided United States v. Ross, 102 S. Ct. 2157 (1982). In *Ross,* the Supreme Court held that when police officers have probable cause to search an entire vehicle without a warrant, they may also search any container or package within the vehicle that might conceal the object of the search. The Court noted that the permissible scope of such warrantless searches would be governed by the object of the search and the place for

In reviewing *Robbins,* which reaffirmed the holdings in *Chadwick* and *Sanders,* it appears that the Court's rationale for invalidating warrantless searches of containers found in vehicles is that these containers are repositories of personal effects exhibiting a legitimate expectation of privacy against warrantless governmental intrusions.[121] Therefore, as the Court noted in *Robbins,* unless the container is of the type that its "contents may be said to be in plain view, those contents are fully protected by the fourth amendment,"[122] and may not be searched without a warrant.

Although neither *Chadwick, Sanders* nor *Robbins* involved a search incident situation,[123] their rationales should still apply to container searches incident to arrest. Indeed, the Court has continuously asserted that a person's expectation of privacy in a container is the same whether the container is found in a car or elsewhere.[124] From this it follows that a person's expectation of privacy in a container should also be the same whether that person is under arrest or not. In fact, the *Chadwick* Court explicitly ruled that an arrest does not diminish an arrestee's expectation of privacy interest in containers.[125]

Therefore, the rationales from *Robbins, Chadwick* and *Sanders* required the *Belton* Court to invalidate the warrantless search of Belton's jacket. Clearly, Belton's jacket was a repository of personal effects exhibiting a legitimate expectation of privacy against warrantless govern-

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which there was probable cause to believe that the item could be found.

Ross represents a marked change in the Supreme Court's view with respect to container searches pursuant to the automobile exception. The decision specifically rejects Robbins v. California, 453 U.S. 420 (1981) (plurality opinion) and explicitly overrules that portion of Arkansas v. Sanders, 442 U.S. 753 (1979) which prohibited the type of search sanctioned in *Ross.* United States v. Ross, 102 S. Ct. 2157 (1982). However, the *Ross* decision is in keeping with *Belton's* holding concerning container searches. *See* New York v. Belton, 453 U.S. 454, 460-61 (1981). Both decisions illustrate that the Supreme Court has changed its previous stance and is taking a much more permissive view towards warrantless container searches when vehicles are involved.

121. Robbins v. California, 453 U.S. 420, 424-25 (1981) (plurality opinion), *rejected,* United States v. Ross, 102 S. Ct. 2157 (1982).

122. 453 U.S. at 427. The Court's examples of the type of containers that would reveal their contents to plain view included a kit of burglar tools or a gun case. *Id.*; *see also* Arkansas v. Sanders, 442 U.S. 753, 764-65 n.13 (1979), *overruled in part,* United States v. Ross, 102 S. Ct. 2157 (1982).

123. All three decisions involved container searches subject to the automobile exception. *See supra* note 47. *Belton* dispensed with the rationale from all three decisions for this very reason. New York v. Belton, 453 U.S. 454, 462-63 (1981).

124. *See* Robbins v. California, 453 U.S. 420, 424-25 (1981) (plurality opinion), *rejected,* United States v. Ross, 102 S. Ct. 2157 (1982); Arkansas v. Sanders, 442 U.S. 753, 766 (1979), *overruled in part,* United States v. Ross, 102 S. Ct. 2157 (1982); United States v. Chadwick, 433 U.S. 1, 13 (1977).

125. See United States v. Chadwick, 433 U.S. 1, 16 n.10 (1977), where the Court noted that "[U]nlike searches of the person . . . searches of possessions [referring to containers] within an arrestee's immediate control cannot be justified by any reduced . . . [expectation] of privacy caused by the arrest." *Id.*

mental intrusions.[126] In fact, the *Belton* Court recognized such clothing to be a container protected by the fourth amendment.[127] However, the *Belton* Court permitted the search of Belton's jacket because he was under arrest,[128] disregarding the fact that Belton's expectation of privacy was in no way diminished because of his arrest.[129]

The Court also dangerously expanded the rationale of *United States v. Robinson*[130] to justify the search of Belton's jacket. The majority interprets *Robinson's* holding to permit the search of containers in a vehicle in which the arrestee was a recent occupant.[131] However, this interpretation appears incorrect. In analyzing the *Robinson* decision, it becomes apparent that its holding only applies to the search of a container found on an arrestee's person; the decision does not permit the warrantless search of a container found in the area within an arrestee's control.[132] Therefore, the *Belton* Court has unjustifiably extended the *Robinson* rationale, disregarding the limitations that *Robinson* impliedly proscribed as to such an extension.

VII. CONCLUSION

In *New York v. Belton,*[133] the Supreme Court ruled that an officer may search, incident to the lawful, custodial arrest of the recent occupants of an automobile, the passenger compartment of the vehicle and any open or closed containers therein.[134] The rule that *Belton* elucidates exhibits the Court's endeavor to establish a "bright-line rule" for the search incident exception in an attempt to make law enforcement more standardized and efficient.[135] However, in the process of creating this rule, the Supreme Court has substantially expanded the spatial and temporal limitations prescribed by *Chimel v. California.*[136] Moreover, the Court upheld a search into areas and containers that the arrestees

126. A jacket is a container that one might keep money, papers or jewelry in, and therefore exhibit a legitimate expectation of privacy in those contents.
127. New York v. Belton, 453 U.S. 454, 461 n.4 (1981).
128. *See id.* at 461.
129. *See supra* note 125 and accompanying text.
130. 414 U.S. 218 (1973).
131. New York v. Belton, 453 U.S. 454, 461 (1981).
132. *See* United States v. Robinson, 414 U.S. 218, 224, 235 (1973); *see also* United States v. Chadwick, 433 U.S. 1, 16 n.10 (1977). The *Chadwick* Court pointed out that *Robinson's* rationale only applies to the search of the person of the arrestee and not to the area within the arrestee's immediate control. *Id. Chadwick* also noted that an arrestee's expectation of privacy interest in containers is not diminished by the arrest. *Id. See generally* 2 W. LA FAVE, SEARCH AND SEIZURE, A TREATISE ON THE FOURTH AMENDMENT § 6.3, at 417 n.56 (1978). La Fave points out that the *Robinson* holding only applies to the search of the person, and that the Court took great care to distinguish its holding from other searches incident to arrest.
133. 453 U.S. 454 (1981).
134. *Id.* at 460-61.
135. *Id.* at 463 (Brennan, J. and Marshall, J., dissenting).
136. 395 U.S. 752 (1969).

could not possibly have reached at the time of the search. The *Belton* decision leaves too many unanswered questions, and more importantly, because the new rule abandons the justifications underlying *Chimel,* it offers no guidance with which law enforcement officials may work out the answers for themselves. The Court exchanges the sound, workable rule in *Chimel,* which offered adequate guidance for determining the constitutionality of warrantless searches incident to arrest, for a "bright-line rule" to be uniformly applied even though, in many cases, the factual circumstances will not exist for reasonably allowing such a warrantless search.

The *Belton* decision also affords officers the right to search containers found in the passenger compartment of a vehicle an arrestee recently occupied. In allowing such a search, the Supreme Court totally disregards the fact that a person exhibits the same legitimate expectation of privacy in a container whether he is under arrest or not. The majority proclaims that a lawful custodial arrest justifies any infringement of a privacy interest an arrestee might have. However, the Court arrives at this conclusion by an erroneous application of the *Robinson* decision and an interpretation of the fourth amendment that can only be construed to mean that the amendment permits the unreasonable searching of arrestees. Although the reasoning behind the *Belton* rule is not without merit, its practical application establishes a dangerous precedent which substantially expands the permissible scope and intensity of the search incident exception. This expansion marks a serious erosion of the fourth amendment protections afforded to arrestees.

Michael Gallerizzo