

The John W. Davis Appellate Advocacy Moot Court Competition, Fall 2008

On August 25, 2005, one uniformed DEA agent and one uniformed FBI agent went to a house after receiving a tip of narcotics activity there. When Defendant Garry Autry answered the door, the agents asked to speak with the owner of the residence. Autry informed the agents that the owner was not home, but would return later that afternoon. After leaving the residence, the agents ran a records check and discovered that Autry had an outstanding warrant for failure to pay child support under the Deadbeat Parents Punishment Act. 18 U.S.C. § 228. The agents also obtained sufficient probable cause to arrest two other individuals associated with the house, Crystal Doyle and Arif Noorani.¹

The agents returned to the house later that evening. Upon the agents' return, they spotted both Doyle and Noorani and immediately arrested them. After Doyle and Noorani were handcuffed and secured in a patrol car, Autry drove up and parked his car in the driveway. As he got out of his car, an agent summoned him. Autry walked eight to twelve feet toward the agent, who immediately arrested and handcuffed him. Within minutes, Autry had been locked in the back of a patrol car, where he remained under the supervision of an agent. At least four agents were at the residence by this time, and the scene was secure. None of the agents suspected that any other individuals were in or near the residence or driveway.

After Autry had been locked in the patrol car, two agents searched the passenger compartment of his car and found a handgun and a plastic baggie containing cocaine. Autry later underwent a voluntary drug test, and traces of marijuana were found in his system. Autry was charged with one count of possession of a narcotic drug with intent to distribute, under 21 U.S.C. § 841(a) and one count of unlawful possession of a gun by an unlawful user of a controlled substance, under 18 U.S.C. § 922(g).

Autry filed a motion to suppress the evidence seized from his car with the district court. Autry claimed that the warrantless search of his car violated his Fourth Amendment rights because the search was not incident to his arrest as he was not a recent occupant of the vehicle. Judge Adams held an evidentiary hearing to determine whether Autry was a recent occupant of his car when he was arrested. Disagreeing with Autry's reasoning and analysis, Judge Adams denied the motion to suppress on the grounds that Autry was a recent occupant of the vehicle, and, therefore the search of his car was justified as incident to his arrest. The Court rejected Autry's argument that the search was illegal because it failed to satisfy the rationales set forth in *Chimel v. California*, 395 U.S. 752 (1969), for dispensing with the warrant requirement, and it instead relied on the "straightforward" rule of *New York v. Belton*, 453 U.S. 454, 455 (1981), which states that "when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile."

After losing the motion to suppress the evidence seized from his car, Autry was then tried and convicted in the district court of one count of possession of a narcotic drug with intent to distribute, under 21 U.S.C. § 841(a) and one count of unlawful possession of a gun by an unlawful user of a controlled substance, under 18 U.S.C. § 922(g).

¹ Whether the agents actually had probable cause to arrest is not at issue here today.

Autry appealed the decision of the district court to the Court of Appeals for the Twelfth Circuit. A three-judge panel of Chief Judge Jackson and Judges Holmes and Marshall, in a 2-1 opinion by C.J. Jackson, held that the district court had erred in finding that the search incident to arrest exception to the Fourth Amendment's warrant requirement permits the warrantless search of an arrestee's car when the scene is secure and the arrestee is handcuffed, seated in the back of a patrol car, and under the supervision of a law enforcement officer. The Twelfth Circuit distinguishes Autry's case from *Belton*, as *Belton* dealt with the permissible scope of a search incident to arrest and Autry's case asks whether any search is permissible and instead focuses its inquiry on whether the twin rationales of *Chimel* warranted the search. The Twelfth Circuit found the *Chimel* rationales were missing and accordingly held that in such circumstances, a warrantless search is not justified. Judge Marshall dissented, stating that, though the decision in *Belton* may warrant reconsideration, it is for the Supreme Court to do so, and not the Twelfth Circuit.

The United States Supreme Court has granted certiorari in this case and oral argument is set for the October 2008 term. One issue is to be decided: Does the Fourth Amendment require law enforcement officers to demonstrate a threat to their safety or a need to preserve evidence related to the crime of arrest in order to justify a warrantless vehicular search incident to arrest conducted after the vehicle's recent occupants have been arrested and secured?

United States District Court for the District
of Northern Georgia at New Lexington

UNITED STATES OF AMERICA

v.

Garry AUTRY

No. CR-06-0317.

February 17, 2006, Filed.

ORDER

Before:

I. ADAMS, District Judge

Defendant Garry Autry has moved to suppress a handgun and baggie containing cocaine seized by the police from the passenger compartment of his automobile on the grounds that the search violated the Fourth Amendment. Autry is charged with one count of unlawful possession of a firearm, under 18 U.S.C. § 922(g), which prohibits the possession of firearms by unlawful users of controlled substances, and one count of possession of a narcotic drug with intent to distribute, under 21 U.S.C. § 841(a). This court held an evidentiary hearing on this motion and hereby DENIES the motion to suppress.

* * *

This case requires us to determine whether it is a violation of the Fourth Amendment to conduct a warrantless search of an arrestee's car when the scene is secure and the arrestee is handcuffed, seated in the back of a patrol car, and under the supervision of a police officer. This court holds that, when the arrestee is a recent occupant of his car when arrested, the search incident to arrest

exception to the Fourth Amendment's warrant requirement permits the warrantless search, and evidence collected during such a search will not be suppressed.

I. FACTUAL BACKGROUND

On August 25, 2005, one uniformed FBI agent and one uniformed DEA agent went to a house after receiving a tip of narcotics activity there. When Defendant Garry Autry answered the door, the agents asked to speak with the owner of the residence. Autry informed the agents that the owner was not home, but would return later that afternoon. After leaving the residence, the agents ran a records check and discovered that Autry had an outstanding warrant for failure to pay child support under the Deadbeat Parents Punishment Act, 18 U.S.C. § 228 (2008), which makes it a federal crime to fail to pay child support in amounts over \$5,000, if the recipient of the child support resides in another state.¹ The agents also obtained sufficient probable cause to arrest two other individuals associated with the house, Crystal Doyle and Arif Noorani.²

The agents returned to the house later that evening. Upon their return, they spotted both Doyle and Noorani outside and immediately arrested them and secured them in the back of separate patrol cars. Shortly thereafter, Autry drove up and parked his car in the driveway. As he got out of his car, an agent summoned him. Autry walked eight to twelve feet toward the agent, who immediately arrested and handcuffed him.

¹ 18 U.S.C. § 228 has been ruled unconstitutional in district courts in California and Illinois, but the legitimacy of this statute has never been questioned in this jurisdiction, and Defendant did not raise the issue in this case. Therefore, this court does not address the constitutionality of 18 U.S.C. § 228 here.

² Whether the agents actually had probable cause to arrest is not at issue here today.

Within minutes, Autry had been locked in the back of a patrol car, where he remained under the supervision of another agent. At least four agents were at the residence by this time, and the scene was secure. Doyle and Noorani were the only other civilians present.

After Autry had been locked in the patrol car, two agents searched the passenger compartment of his car and found a handgun and a plastic baggie containing cocaine. Autry later underwent a voluntary drug test that found evidence of marijuana in his system. Autry was charged with one count of unlawful possession of a firearm, under 18 U.S.C. § 922(g), which prohibits the possession of firearms by unlawful users of controlled substances, and one count of possession of a narcotic drug with intent to distribute, under 21 U.S.C. § 841(a).

II. LEGAL ANALYSIS

A. Prior Case Law

The Supreme Court first recognized that a search incident to arrest was reasonable under the Fourth Amendment in *Weeks v. United States*, 232 U.S. 383, 392 (1914). The Court had difficulty, however, in defining the scope of the post-arrest search. Over the following decades it alternately expanded the scope to include the premises where the person was arrested and limited the scope to the area under the control of the person arrested at the time he was arrested. See *Chimel v. California*, 395 U.S. 752, 755–62 (1969) (recounting the decisional vacillations).

The vacillations ended in *Chimel*. The Court defined the scope to include “the arrestee’s person and the area ‘within his immediate control.’” *Id.* at 763. The Court concluded that the Fourth Amendment

permits searches within that boundary because (1) “it is reasonable for the arresting officer to search the person arrested in order to remove any weapons” that the arrested person “might seek to use in order to resist arrest or effect his escape”; (2) “it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee’s person in order to prevent its concealment or destruction”; and (3) “[a] gun on a table or in a drawer in front of one arrested can be as dangerous as one concealed in the clothing of the person arrested.” *Id.*

The Court next addressed searches incident to arrest in *United States v. Robinson*, 414 U.S. 218 (1973). In that case, an officer arresting Robinson for driving on a revoked license searched his clothing and found heroin. *Id.* at 220–23. The lower court had held that the search of Robinson’s clothing was improper because the arresting officer lacked probable cause to believe that Robinson might be armed or that he had on his person any evidence relating to driving on a revoked license. *Id.* at 233–34.

The Supreme Court rejected such a limitation, noting that the government had the authority, “‘always recognized under English and American law . . . to search the person of the accused when legally arrested to discover and seize fruits or evidences of crime.’” *Id.* at 225 (quoting *Weeks*, 232 U.S. at 392). The Court held that the fact of the arrest itself justifies a complete search of the person: “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. It is the fact of the lawful arrest which establishes the authority to search.” *Id.* at 235.

The Supreme Court applied the principles of *Chimel* and *Robinson* to searches incident to the arrest of automobile occupants in *New York v. Belton*. *New York v. Belton*, 453 U.S. 454 (1981). In that case, a New York State police officer stopped Belton for speeding on the New York Thruway. *Belton*, 453 U.S. at 455. As the officer spoke with Belton, he smelled burnt marijuana and saw an envelope on the automobile's floor that he associated with marijuana. *Id.* at 455–56. The officer arrested Belton and his three companions, patted them down for weapons, placed them each in separate areas of the Thruway, and searched the automobile. *Id.* at 456. In the backseat, he found Belton's leather jacket, searched it, and discovered cocaine in one of the pockets. *Id.*

On appeal, following Belton's conviction on drug possession charges, the New York Court of Appeals ruled that the search violated the Fourth Amendment because the jacket was "inaccessible" once the officer seized it, and there was "'no longer any danger that the arrestee or a confederate might gain access to the article.'" *Id.* (quoting *People v. Belton*, 407 N.E.2d 420, 421 (N.Y. 1980)). The state court opined that at the point that an arrestee "is effectively neutralized or the object is within the exclusive control of the police, . . . any exigency which would otherwise have justified a warrantless search has been dissipated and the search is no longer an incident to the arrest." *People v. Belton*, 407 N.E.2d at 422.

The Supreme Court rejected such a case-by-case analysis. Recognizing that *Robinson* had established a "straightforward rule, easily applied, and predictably enforced," *Belton*, 453 U.S. at 459, and that lower courts had "found no workable definition" of *Chimel's* "area within the immediate

control of the arrestee" when the arrestee was a recent occupant of an automobile, *id.* at 460, the Court sought "a settled principle" to guide the police in these situations. *Id.* Because "articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within 'the area into which an arrestee might reach in order to grab a weapon or evidentiary item,'" *id.* (quoting *Chimel*, 395 U.S. at 763), the Supreme Court held that "when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *Id.* This "bright-line" rule allows an officer to search a recent occupant's automobile incident to arrest regardless whether the officer actually fears for his safety or believes that evidence may be destroyed. *Michigan v. Long*, 463 U.S. 1032, 1049 n.14 (1983) (stating that "the 'bright line' that we drew in *Belton* clearly authorizes [a search of an automobile] whenever officers effect a custodial arrest").

In 2004, the Supreme Court further defined when officers may search an automobile incident to a lawful arrest. See *Thornton v. United States*, 541 U.S. 615 (2004). In *Thornton*, an officer followed Thornton and determined that his license tags had been issued for a car model other than what he was driving. *Id.* at 618. Before the officer had an opportunity to pull him over, however, Thornton parked and got out of his car. *Id.* The officer saw Thornton exit, parked his own car, accosted Thornton, and requested his driver's license. *Id.* Because Thornton appeared nervous, the officer asked if he could pat him down. *Id.* In Thornton's pockets, the officer found bags of marijuana and cocaine. *Id.* The officer handcuffed Thornton, told him that he was under arrest and placed him in the back seat

of the patrol car. *Id.* The officer then searched Thornton's car and found a .9 millimeter handgun under the driver's seat. *Id.*

The Fourth Circuit Court of Appeals noted Thornton's concession that he was in "close proximity, both temporally and spatially," to his vehicle. It, therefore, found that the car was within his immediate control and that the search was reasonable under *Belton*. *Id.* at 2130. The Supreme Court affirmed. It first noted that *Belton* did not depend on whether the arrestee got out of the vehicle at the officer's direction or whether the officer initiated contact while the suspect remained in the car. *Id.* at 2131.

The Supreme Court reasoned that the stress and uncertainty of an arrest "is no less merely because the arrestee exited his car before the officer initiated contact, nor is an arrestee less likely to attempt to lunge for a weapon or to destroy evidence if he is outside of, but still in control of, the vehicle." *Id.* The Court emphasized that *Belton* applies to both "occupants" and "recent occupants" of a vehicle. It, therefore, concluded that even though not all contraband in the passenger compartment may be readily accessible to a recent occupant, "[t]he need for a clear rule . . . justifies the sort of generalization which *Belton* enunciated." *Id.* at 2132. The Supreme Court held that "[o]nce an officer determines that there is probable cause to make an arrest [of a recent occupant of a vehicle], it is reasonable to allow officers to ensure their safety and to preserve evidence by searching the entire passenger compartment." *Id.* It further held that "[s]o long as an arrestee is the sort of 'recent occupant' of a vehicle such as petitioner was here, officers may search that vehicle incident to the arrest." *Id.* The dissent, however, in *Thornton* correctly noted that

the decision does not say "how recent is recent, or how close is close." *Id.* at 2140. An arrestee's status as a "recent occupant" may thus turn on his temporal and spatial relationship to the car at the time of the arrest and search. *Id.* at 2131.

B. Compliance under *Belton*

Belton's bright-line rule is consistent with Fourth Amendment principles because it authorizes reasonable searches that appropriately balance the limited privacy interest of an arrestee with the government's interest in protecting the safety of arresting officers and preserving evidence of crime.

In evaluating the reasonableness of a search under *Belton*, an arrestee's privacy interest in his automobile must give way to the need to protect the arresting officers and to preserve evidence of crime. An individual has a reduced expectation of privacy in the contents of his automobile. *See, e.g., Wyoming v. Houghton*, 526 U.S. 295, 303 (1999) (automobile searches intrude much less upon personal privacy and dignity than searches of persons, in light of the everyday exposure of automobiles and their contents to public view, police regulation, and potential involvement in traffic accidents); *California v. Carney*, 471 U.S. 386, 390–92 (1985) ("ready mobility" and pervasive regulation result in a reduced expectation of privacy in motor vehicles); *Almeida-Sanchez v. United States*, 413 U.S. 266, 279 (1973) (automobile searches are "far less intrusive on the rights protected by the Fourth Amendment than the search of one's person or of a building"). This reduced expectation of privacy is "diminished further when the occupants are placed under custodial arrest." *Robbins v. California*, 453 U.S. 420, 431 (1981) (Powell, J., concurring in judgment) (citations omitted), overruled on other

grounds by *United States v. Ross*, 456 U.S. 798 (1982); see also *United States v. Edwards*, 415 U.S. 800, 808–09 (1974) (“While the legal arrest of a person should not destroy the privacy of his premises, it does—for at least a reasonable time and to a reasonable extent—take his own privacy out of the realm of protection from police interest in weapons, means of escape, and evidence.”) (quoting *United States v. DeLeo*, 422 F.2d 487, 493 (1st Cir. 1970)).

The paramount interest in officer safety outweighs this limited privacy interest. Arrests, especially arrests of recent occupants of automobiles, are dangerous to police officers. See *Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977) (per curiam) (arresting automobile occupants presents “inordinate risk[s]” for officers); *Robinson*, 414 U.S. at 234 n.5 (“The danger to the police officer flows from the fact of the arrest, and its attendant proximity, stress, and uncertainty.”); see also *Washington v. Chrisman*, 455 U.S. 1, 7 (1982) (“Every arrest must be presumed to present a risk of danger to the arresting officer.”). Officers cannot predict how persons will react to being arrested. *Chrisman*, 455 U.S. at 7. Between 1997 and 2006, 133 of the 562 officers feloniously killed were killed during arrest situations. FBI U.S. Dep’t of Justice, Uniform Crime Report: Law Enforcement Officers Killed and Assaulted, <http://www.fbi.gov/ucr/killed/2006/feloniouslykilled.html>, Table 19 (2006). In that same period, 100 of the officers feloniously killed were killed during traffic stops. *Id.* More than 58,000 officers were assaulted during the same time period, and more than 9,000 of those assaults occurred while attempting arrests, and more than 6,000 of those assaults occurred while making a traffic stop. FBI U.S. Dep’t of Justice, Uniform Crime Report: Law Enforcement Officers Killed and Assaulted,

<http://www.fbi.gov/ucr/killed/2006/officersassaulted.html>, Table 66 (2006). Because arrests are so dangerous and volatile, merely handcuffing the arrestee and securing him in a patrol car does not eliminate the risk to the officers. Handcuffed and secured arrestees, like Autry, can escape and threaten officers.

Officer safety, while the paramount governmental interest, is not the only interest weighing in favor of the *Belton* rule. The government also has an interest in preserving evidence of crimes. At the moment of a person’s arrest, he is motivated “to take conspicuous, immediate steps to destroy incriminating evidence.” *Cupp v. Murphy*, 412 U.S. 291, 296 (1973). Without searching the passenger compartment of an automobile incident to the recent occupant’s arrest, the recent occupant or a confederate may enter the automobile to remove or destroy evidence.

The balance between an individual’s limited privacy interest in his automobile and the need to ensure officer safety and to preserve evidence tilts heavily in favor of the government. See *Robbins*, 453 U.S. at 431 (Powell, J., concurring in judgment) (“*Belton* trades marginal privacy of containers within the passenger area of an automobile for protection of the officer and of destructible evidence. The balance of these interests strongly favors the Court’s rule.”).

For the past 25 years *Belton*’s bright-line rule has provided officers with the necessary clarity to easily determine when they may search and when they may not. Of course, situations can arise on the margins that will test the limits of the rule, and courts may have to decide close questions whether a person was a “recent occupant” or whether the police conducted the search as a “contemporaneous incident” to the arrest.

But in the overwhelming majority of cases, the *Belton* rule has been “a straightforward rule, easily applied and predictably enforced.” *See Belton*, 453 U.S. at 459.

C. Application to Autry

It is undisputed in the instant matter that law enforcement made a lawful custodial arrest of Autry under the Deadbeat Parents Punishment Act. The inquiry thus turns to whether Autry is a “recent occupant” under *Thornton* and whether the ensuing search of Autry’s automobile was roughly contemporaneous with the arrest, and not so separated in time or by intervening acts that the search was not incident to the arrest. In *Thornton*, the Court noted that “an arrestee’s status as a ‘recent occupant’ may turn on this temporal or spatial relationship to the car at the time of the arrest and search.” *Thornton*, 541 U.S. at 622. But as many have noted, the Court offered no clear parameters for defining a “recent occupant” or what temporal or spatial limits might apply. *See generally* 3 Wayne R. LaFave, Search and Seizure § 7.1(c), at 448 & n.79 (3d ed. 1996 & Supp. 2000).

Here, Autry was a recent occupant of the car, and the search was contemporaneous in time with the arrest. First, Autry was arrested within seconds of exiting his vehicle approximately 8–12 feet away from his car. Second, the agents conducted its search immediately after his arrest. Autry does not dispute this. He alternatively argues that whether he was a recent occupant or whether the search was contemporaneous in time with the arrest are largely irrelevant when a suspect has been secured and handcuffed. Indeed, to take Autry’s view would substantially render *Belton* a dead letter.

According to Autry’s refined approach to *Belton*, a search of a passenger compartment incident to arrest would then be permissible only if the officer left the defendant in the car, in which event the officer would have to crawl over him to effectuate the search, or if the officer removed the defendant but did not (or could not) effectively secure him. Such a rule, consequently, might create a perverse incentive for an arresting officer to prolong the period during which the arrestee is kept in an area where he could pose a danger to the officer. And it would certainly vitiate the Supreme Court’s intention to create “a straightforward rule, easily applied, and predictably enforced,” *Belton*, 453 U.S. at 459, by requiring courts to determine retrospectively whether a given arrestee had been so insufficiently secured as to warrant the officer’s search of the passenger compartment.

Accordingly, this court reads *Belton* and *Thornton* as creating a bright-line rule that, incident to and contemporaneous with a valid custodial arrest of the recent occupant of a vehicle, the police may search the passenger compartment of the vehicle without regard to whether the occupant was removed and secured at the time of the search. This reading is in accord with that of several other circuits that have considered the question. *See, e.g., United States v. Humphrey*, 208 F.3d 1190, 1202 (10th Cir. 2000); *United States v. Sholola*, 124 F.3d 803, 817–18 (7th Cir. 1997); *United States v. Doward*, 41 F.3d 789, 791, 792 n.1 (1st Cir. 1994); *United States v. Moorehead*, 57 F.3d 875, 877–78 (9th Cir. 1995); *United States v. Mans*, 999 F.2d 966 (6th Cir. 1993); *see also* 3 Wayne R. LaFave, Search and Seizure § 7.1(c), at 448 & n.79 (3d ed. 1996 & Supp. 2000) (concluding that “under *Belton* a search of the vehicle is allowed even after the defendant [is] removed from it, handcuffed, and placed in the squad car”

and collecting cases). Applying that rule to Autry's case, the search of the automobile and the consequent discovery of the gun and drugs were lawful.

III. CONCLUSION

Based on the foregoing, and all the files, records and proceedings herein, IT IS HEREBY ORDERED that Autry's Motion to Suppress Evidence Obtained as Result of Search and Seizure be DENIED.

United States Court of Appeals for the
Twelfth Circuit.

UNITED STATES OF AMERICA,
Plaintiff-Appellee

v.

Garry AUTRY, *Defendant-Appellant*,

No. CR-06-0317.

Argued Oct. 14, 2007.
Decided Nov. 11, 2007.

Appeal from the United States District Court
for the District of Northern Connorgia at
New Lexington.

Before: J. MARSHALL and O. HOLMES,
Circuit Judges, and R. JACKSON, Senior
Circuit Judge.

R. JACKSON, Senior Circuit Judge:

This case requires us to determine whether the search incident to arrest exception to the Fourth Amendment's warrant requirement permits the warrantless search of an arrestee's car when the scene is secure and the arrestee is handcuffed, seated in the back of a patrol car, and under the supervision of a law enforcement officer. We hold that in such circumstances, a warrantless search is not justified.

I. FACTS AND PROCEDURAL BACKGROUND

On August 25, 2005, a uniformed DEA agent and a uniformed FBI agent went to a house after receiving a tip of narcotics activity there. When Defendant Garry Autry answered the door, the agents asked to speak with the owner of the residence. Autry informed the agents that the owner was not

home, but would return later that afternoon. After leaving the residence, the agents ran a records check and discovered that Autry had an outstanding warrant for failure to pay child support under the Deadbeat Parents Punishment Act. 18 U.S.C. § 228. The agents, at this time, also obtained sufficient probable cause to arrest two other individuals associated with the house, Crystal Doyle and Arif Noorani.¹

The agents returned to the house later that evening. Upon the agents' return, they spotted both Doyle and Noorani and immediately arrested them and secured them in the back of separate patrol cars. After the arrests, Autry drove up and parked his car in the driveway. As he got out of his car, an agent summoned him. Autry walked eight to twelve feet toward the agent, who immediately arrested and handcuffed him. Within minutes, Autry had been locked in the back of a patrol car, where he remained under the supervision of an agent. At least four agents were at the residence by this time and the scene was secure. There is no evidence that there were any people in the vicinity besides Autry, Doyle, Noorani, and the agents.

After Autry had been locked in the patrol car, two agents searched the passenger compartment of his car and found a handgun and a plastic baggie containing cocaine. Autry later underwent a voluntary drug test, and traces of marijuana were found in his system. Autry was charged with one count of possession of a narcotic drug with intent to distribute, under 21 U.S.C. § 841(a), and one count of unlawful possession of a gun by an unlawful user of a controlled substance, under 18 U.S.C. § 922(g).

¹ Whether the agents actually had probable cause to arrest is not at issue here today.

Autry filed a motion to suppress the evidence seized from his car with the district court below. There, the court conducted an evidentiary hearing to determine whether Autry was a recent occupant of his car when he was arrested. *United States v. Autry*, 587 F. Supp. 3d 1, 1 (N.D. Con'gia 2006). After the hearing, the court determined that Autry was a recent occupant and concluded that the search of his car was thus justified as incident to his arrest. *Autry*, 587 F. Supp. at 1. Autry was then tried and convicted in the district court of one count of possession of a narcotic drug with intent to distribute, under 21 U.S.C. § 841(a) and one count of unlawful possession of a gun by an unlawful user of a controlled substance, under 18 U.S.C. § 922(g). Autry petitioned for review of the district court's denial of his motion to suppress the evidence seized during the search of his car. We granted his petition for review because this case presents an important question regarding vehicle searches incident to arrest.

II. DISCUSSION

The Fourth Amendment guarantees the right of citizens to be free from unreasonable governmental searches. U.S. Const. amend. IV; *see also Terry v. Ohio*, 392 U.S. 1, 9 (1968). “[S]ubject only to a few specifically established and well-delineated exceptions,” a search is presumed to be unreasonable under the Fourth Amendment if it is not supported by probable cause and conducted pursuant to a valid search warrant. *Katz v. United States*, 389 U.S. 347, 357 (1967). The state always bears the burden of persuasion that a warrantless search it conducted falls within one of these exceptions. *Id.*

The Supreme Court has recognized a “search incident to a lawful arrest” as one of the exceptions to the Fourth Amendment’s

warrant requirement. *See, e.g., Chimel v. California*, 395 U.S. 752, 755 (1969). In *Chimel*, the Court justified the search incident to arrest exception by the need to protect officers and preserve evidence:

When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer’s safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee’s person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested.

Id. at 762–63. *See also Knowles v. Iowa*, 525 U.S. 113, 116 (1998) (citing cases going back to *Weeks v. United States*, 232 U.S. 383, 392 (1914)) (stating that warrantless searches incident to arrest are justified by two—and only two—exigencies: “(1) the need to disarm the suspect in order to take him into custody, and (2) the need to preserve evidence for later use at trial”); *accord Thornton v. United States*, 541 U.S. 615, 620 (2004) (identifying exigencies as “the need to remove any weapon the arrestee might seek to use to resist arrest or to escape, and the need to prevent the concealment or destruction of evidence”). Based on the rationales of officer safety and preservation of evidence, the Court limited

the permissible scope of a search incident to arrest to the “arrestee’s person and the area ‘within his immediate control’”—that is, “the area from within which he might gain possession of a weapon or destructible evidence.” *Chimel*, 395 U.S. at 763. See also *Cupp v. Murphy*, 412 U.S. 291, 295 (1973) (quoting *Chimel* 395 U.S. at 763); *Thornton*, 541 U.S. at 620 (stating that authorities may search only “the person of the arrestee and the area immediately surrounding him”); *Coolidge v. New Hampshire*, 403 U.S. 443, 457 n.11 (1971) (stating that Police’s authority to search incident to arrest is limited to “only . . . the arrestee’s person and the area within his immediate control”) (internal quotations omitted).

Although the rule has worked reasonably well in some contexts, it has proved difficult to apply to automobile searches incident to arrest, prompting the Supreme Court to reconsider and redefine the permissible scope of such a search. See *New York v. Belton*, 453 U.S. 454, 455 (1981). In *Belton*, a police officer stopped a speeding vehicle and made contact with the driver and three passengers while all occupants were seated in the vehicle. *Id.* at 455–56. Upon smelling marijuana, the officer ordered the occupants out of the car, arrested them, and searched each one. *Id.* at 456. As the driver and passengers stood by, unrestrained, the officer searched the car’s passenger compartment and found a jacket containing cocaine. *Id.*

The sole question before the Court in *Belton* was the “constitutionally permissible scope” of an otherwise lawful search of an automobile incident to arrest, given the exigencies of the arrest situation. *Id.* at 455, 457; see also *Thornton*, 541 U.S. at 619 (2004) (describing *Belton* as deciding “the

constitutionally permissible scope of a search” incident to arrest).

In considering the search’s validity, the Court reaffirmed both the twin exigency rationales underlying and the scope of lawful searches incident to arrest established in *Chimel*. However, because lower “courts ha[d] found no workable definition of ‘the area within the immediate control of the arrestee’ when that area arguably includes the interior of an automobile and the arrestee is its recent occupant,” *Belton* sought to fashion a straightforward rule that would permit authorities to determine the scope of their authority in this specific “category of cases.” *Belton*, 453 U.S. at 460.

This “category of cases” “suggest[ed] the generalization that articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within ‘the area into which an arrestee might reach in order to grab a weapon or evidentiary ite[m].’” *Id.* (second alteration in original) (quoting *Chimel*, 395 U.S. at 763). The Court then “read *Chimel*’s definition of the limits of the area that may be searched in light of that generalization” and set forth a bright-line rule: “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.” *Id.* (footnote omitted). It also held that authorities may search containers within the passenger compartment (whether open or closed) because “if the passenger compartment is within reach of the arrestee, so also will containers in it.” *Id.* The vehicle’s trunk, however, may not be searched. *Id.* at 460 n.4.

Noting the lack of consistency among courts in deciding how much of the automobile the

police could search incident to arrest and the desirability of a bright-line rule to guide police officers in the conduct of their duties, the Supreme Court thus established a “bright-line” rule that dispenses with the need for fact-specific inquiries in individual cases into whether particular areas of or objects in the passenger compartment satisfy *Chimel*’s area of immediate control test. But, as noted, this rule applies only to a certain “category of cases”—namely, those in which “‘the area within the immediate control of the arrestee’ . . . arguably includes the interior of an automobile and the arrestee is its recent occupant.” *Id.* at 460. Because *Belton* made clear that its holding was limited to the “particular and problematic” context at issue and “in no way alter[ed] the fundamental principles established in the *Chimel* case regarding the basic scope of searches incident to lawful custodial arrests,” *id.* at 460 n.3, *Belton* merely created the legal fiction that if some part of the passenger compartment is within a recent occupant’s reach, then all of it is within his reach, including any containers therein.

The *Belton* Court upheld the search of the car’s entire passenger compartment at issue there because the government had satisfied both conditions triggering application of *Belton*’s bright-line rule. The four arrestees were recent occupants—they had occupied the vehicle immediately before their arrests and the search. Moreover, the car was “within the area which we have concluded was ‘within the arrestee’s immediate control’ within the meaning of the *Chimel* case.” *Id.* at 462. This conclusion is unsurprising given that the arrestees stood unrestrained, next to the car during the search and thus the car was conceivably accessible to them when the officer searched it.

The State and our dissenting colleagues seek to bring Autry’s case within the *Belton* rule. Unlike *Belton*, however, this case deals not with the permissible scope of the search of an automobile, but with the threshold question whether the police may conduct a search incident to arrest at all once the scene is secure. Because *Belton* does not purport to address this question, we must determine whether officer safety or the preservation of evidence, the rationales discussed in *Chimel* that excuse the warrant requirement for searches incident to arrest, justified the warrantless search of Autry’s car.

Neither rationale supports the search here. At the time of the search, Autry was handcuffed, seated in the back of a locked patrol car, and under the supervision of a law enforcement officer. The other two arrestees at the scene were also handcuffed and detained in the back of patrol cars, and the record reflects no unsecured civilians in the vicinity. *Autry*, 587 F. Supp. at 1–2. At least four agents were on the scene. *Id.* At that point, the record gives no indication that the police had any reason to believe that anyone at the scene could have gained access to Autry’s vehicle or that the agents’ safety was at risk. *Id.* Indeed, one of the agents who searched Autry’s car acknowledged at the evidentiary hearing that the scene was secure at the time of the search. Therefore, neither a concern for law enforcement officer safety nor the preservation of evidence justified the warrantless search of Autry’s car. Absent either of these *Chimel* rationales, the search cannot be upheld as a lawful search incident to arrest.²

² We agree with Justice Scalia’s statement that applying the *Belton* doctrine to justify a search of the car of a person handcuffed and confined in a police car “stretches [the doctrine] beyond its breaking point.” *Thornton*, 541 U.S. at 625 (Scalia, J., concurring in the judgment).

Nor does this case require this Court to reconsider *Belton*. *Belton* dealt with a markedly different set of circumstances from those present in this case. The four unsecured occupants of the vehicle in *Belton* presented an immediate risk of loss of evidence and an obvious threat to the lone officer's safety that are not present in *Autry*'s case. See *Belton*, 453 U.S. at 455–56. Thus, in *Belton*, *Chimel*'s justifications were satisfied and the search was “strictly tied to and justified by” the circumstances which rendered its initiation permissible.” *Id.* at 457 (quoting *Terry*, 392 U.S. at 19). Here, to the contrary, because *Autry* and the other two arrestees were all secured at the time of the search and at least four officers were present, no exigencies existed to justify the vehicle search at its inception. *Belton* therefore does not support a warrantless search on the facts of this case.

It is possible to read *Belton*, as the State and the Dissent do, as holding that because the interior of a car is generally within the reach of a recent occupant, the *Belton* bright-line rule eliminates the requirement that the police assess the exigencies of the situation. But, if no exigency must justify the warrantless search, it would seem to follow that a warrantless search incident to an arrest could be conducted hours after the arrest and at a time when the arrestee had already been transported to the police station. Yet the Court was careful in *Belton* to distinguish *United States v. Chadwick*, 433 U.S. 1, 15 (1977), overruled on other grounds by *California v. Acevedo*, 500 U.S. 565 (1991), in which it had rejected an argument that a search of a footlocker more than an hour after the defendants' arrests could be justified as incidental to the arrest. In *Chadwick*, the court held that a search is not “incident to th[e] arrest either if the search is

remote in time or place from the arrest or no exigency exists.” *Chadwick*, 433 U.S. at 15 (internal citation and quotation marks omitted). The Court applied this rule and found that, because the search occurred “after federal agents had gained exclusive control of the footlocker and long after respondents were securely in custody, the search therefore cannot be viewed as incidental to the arrest or as justified by any other exigency.” *Belton*, 453 U.S. at 462 (quoting *Chadwick*, 433 U.S. at 15) (internal citations omitted); see also *Arkansas v. Sanders*, 442 U.S. 753 (1979) (confirming in dictum that exigent circumstances must justify the search when it is initiated); *Illinois v. Rodriguez*, 497 U.S. 177, 191–92 (holding that a warrantless search is reasonable “only when an exigency makes [it] imperative”). Such a distinction would be wholly unnecessary under the State's interpretation of *Belton*.

Furthermore, it is well-settled Fourth Amendment law that the exigencies are always adjudged at the time of search. See *Mincey v. Arizona*, 437 U.S. 385 (1978) (holding that subsequent searches of home are unlawful because no exigencies justified the warrantless entry); *Ker v. California*, 374 U.S. 23, 40 n.12 (1963) (“It goes without saying that in determining the lawfulness of entry and the existence of probable cause we may concern ourselves only with what the officers had reason to believe at the time of their entry.”). The circuit courts are in accord. See, e.g., *Fisher v. City of San Jose*, 509 F.3d 952, 961 n.8 (9th Cir. 2007) (“[I]n the criminal law enforcement context, exigent circumstances are always assessed at the time of the search.”), *reh'g granted*, 519 F.3d 908 (9th Cir. 2008); *Cabell v. Rousseau*, 130 F. App'x 803, 806 (7th Cir. 2005) (“[E]xigent circumstances are measured at the time of the search.”); *United States v. Hardy*, 52

F.3d 147, 149 (7th Cir. 1995) (“However, the Supreme Court has carved out several exceptions to the warrant requirement, including where ‘exigent circumstances’ exist at the time of search.”).

In this light, a search must be justified by *Chimel*’s twin exigency rationales when it is commenced and thus must be limited to the areas into which the arrestee conceivably could reach at that time. The Supreme Court has repeatedly said so in the specific context of searches incident to arrest, *see, e.g., Sanders*, 442 U.S. at 763–64 n.11, and many federal and state appellate courts decisions are in accord, holding that authorities may search only the area under the arrestee’s immediate control at the time of the search.³ In *United States v. Lyons*, for example, the D.C. Circuit, in an opinion joined by then-Judge Scalia, held “[t]o determine whether a warrantless search incident to an arrest exceeded constitutional bounds, a court must ask: was the area in question, at the time it was searched,

conceivably accessible to the arrestee—assuming that he was neither ‘an acrobat [nor] a Houdini’?” *United States v. Lyons*, 706 F.2d 321, 330 (footnote omitted) (alteration in original) (quoting *United States v. Mapp*, 476 F.2d 67, 80 (2d Cir. 1973)).

Relying on language in *United States v. Robinson*, 414 U.S. 218 (1973), the State next maintains that the *Chimel* justifications are presumed to exist in all arrest situations simply by “the fact of the lawful arrest,” *id.* at 235, and so it need not show that either *Chimel* rationale existed at the time of the search. *Id.*

But *Robinson* does not hold that every search following an arrest is excepted from the Fourth Amendment’s warrant requirement; if it did, the Court’s opinions in the cases following *Chimel* would hardly have been necessary. Rather, *Robinson* teaches that the police may search incident to an arrest without proving in any particular case that they were concerned about their safety or the destruction of evidence; the *Robinson* court assumes these concerns are present in every arrest situation. The Court has stated in other cases, though, that when these dual concerns are not present, the “justifications [underlying the exception] are absent” and a warrant is required to search. *Preston v. United States*, 376 U.S. 364, 367–68 (1964); accord *Chambers v. Maroney*, 399 U.S. 42, 47 (1970) (“[T]he reasons that have been thought sufficient to justify warrantless searches carried out in connection with an arrest no longer obtain when the accused is safely in custody at the station house.”); *see also Chadwick*, 433 U.S. at 15. Similarly, when, as here, the justifications underlying *Chimel* no longer exist because the scene is secure and the arrestee is handcuffed, secured in the back of a patrol car, and under the supervision of

³ *See, e.g., United States v. Johnson*, 16 F.3d 69, 71–73 (5th Cir. 1994) (assessing arrestee’s area of immediate control at the time of search); *United States v. McConnell*, 903 F.2d 566, 570 (8th Cir. 1990) (same); *United States v. Bonitz*, 826 F.2d 954, 956 (10th Cir. 1987) (same); *United States v. Cueto*, 611 F.2d 1056, 1062 (5th Cir. 1980) (same); *United States v. Berenguer*, 562 F.2d 206, 210 (2d Cir. 1977) (same); *United States v. Mapp*, 476 F.2d 67, 79–80 (2d Cir. 1973) (same); *United States v. Baca*, 417 F.2d 103, 105 (10th Cir. 1969) (same); *People v. Summers*, 86 Cal. Rptr. 2d 388, 389–90 (Cal. Ct. App. 1999) (same); *State v. LaMay*, 103 P.3d 448 (Idaho 2004) (same); *Stackhouse v. State*, 468 A.2d 333, 342 (Md. 1983) (same); *State v. Vittellone*, 453 A.2d 894, 896 (N.J. Super. Ct. App. Div. 1982) (same); *State v. Cook*, 332 S.E.2d 147, 155 (W. Va. 1985) (same). *But see United States v. Abdul-Saboor*, 85 F.3d 664, 668–69 (D.C. Cir. 1996) (assessing arrestee’s area immediate control at the time of arrest but concluding search is not incident to arrest if arrestee is “‘immobilized’ so that the area to be searched is not ‘conceivably accessible’ to him” at time of search).

a law enforcement officer, the warrantless search of the arrestee's car cannot be justified as necessary to protect the officers at the scene or prevent the destruction of evidence.

The State also argues that the Supreme Court's recent decision in *Thornton v. United States*, 541 U.S. 615 (2004), compels a contrary result. In *Thornton*, an officer in an unmarked patrol car ran a check on the license plate of a suspicious car and discovered that the plate was not registered to that car. *Id.* at 617–18. Before the officer could pull the car over, Thornton parked and alighted from the car. *Id.* at 618. The officer parked his patrol car behind Thornton's car, exited, and approached him. *Id.* Thornton agreed to a pat down search, during which the officer felt a bulge in Thornton's pocket. *Id.* Thornton admitted to possessing drugs and produced bags containing marijuana and crack cocaine. *Id.* The officer arrested and handcuffed Thornton and placed him in the back of the patrol car. *Id.* The officer then searched Thornton's car and found a gun. *Id.*

Although the facts in *Thornton* resemble those in the case before us, the case is distinguishable. In *Thornton*, the Court confirmed the *Belton* rule, authorizing a search of the car's entire passenger compartment and containers therein when (1) the car is arguably within the arrestee's immediate control and (2) the arrestee is its recent occupant. Thornton never claimed that being placed in the patrol car removed the *Chimel* justifications for the search; rather, he challenged the lawfulness of the search of his car on the ground that he was out of his car before his encounter with the police began. *Id.* at 619. Therefore, the *Thornton* Court was only asked to address the second *Belton* trigger discussed above—the meaning of “recent occupant,” or, stated

differently, whether the *Belton* rule applies when an officer does not initiate contact with a vehicle's occupant until after the occupant has left the vehicle. *Id.* at 617, 622 n.2 (declining to address the question on which Court did not grant review), 624 n.4 (plurality declining to address questions other than “whether the [*Belton* rule] is confined to situations in which the police initiate contact with the occupant of a vehicle while that person is in the vehicle”). The Supreme Court concluded that, though Thornton had exited the vehicle before encountering the police officer, he was still a “recent occupant” of the vehicle: “[W]hile an arrestee's status as a ‘recent occupant’ may turn on his temporal or spatial relationship to the car at the time of the arrest and search, it certainly does not turn on whether he was inside or outside the car at the moment that the officer first initiated contact with him.” *Id.* at 622 (footnote omitted).⁴

⁴ Moreover, the courts have struggled in applying the Court's instruction that recent occupant status “may turn on [the arrestee's] temporal or spatial relationship to the car at the time of the arrest and search.” *Thornton*, 541 U.S. at 622. See, e.g., *United States v. Fields*, 456 F.3d 519, 522 (5th Cir. 2006) (“[T]he Thornton Court ‘never specified the physical distance between the defendant and his car at the time he was arrested’ that would constitute a ‘recent occupant.’”); *United States v. Palmer*, 206 F. App'x 357, 359 (5th Cir. 2006) (“The majority in *Thornton* does not precisely define the term ‘recent occupants’ other than to remark that ‘the arrest of a suspect who is next to a vehicle presents identical concerns regarding officer safety and the destruction of evidence as the arrest of one who is inside the vehicle.’”), *cert. denied*, 128 S. Ct. 39 (2007); *United States v. Jones*, 155 F. App'x 204, 207 (6th Cir. 2005) (“The Court expressly declined to define the term . . . [‘recent occupant’], and . . . the Court never specified the physical distance between the defendant and his car at the time he was arrested or the amount of time that had elapsed since he had exited his car.” (citations omitted)), *cert. denied*, 547 U.S. 1029 (2006); *Rainey, v. Commonwealth*, 197 S.W.3d 89, 94–95 (Ky. 2006) (“Thus courts are left with little guidance in determining an arrestee's status as a

Because Thornton's holding was carefully limited to the question presented, the Supreme Court did not address whether, even if an arrestee is a recent occupant, a search of the arrestee's vehicle is nonetheless unlawful if concerns for officer safety or destruction of evidence—the *Chimel* justifications—no longer exist at the time of the search. *See id.* at 622 n.2, 624 n.4.

Furthermore, in *Thornton*, five Members of the Supreme Court expressed serious doubts that *Belton*'s bright-line rule could justify vehicle searches undertaken after the foreseeable risk of the arrestee gaining access to the passenger compartment had

'recent occupant' [T]here is no hard and fast definition of what constitutes 'recent' both in time and distance.'").

As to spatial proximity between the arrestee and the car, compare *United States v. Arango*, 879 F.2d 1501, 1506 (7th Cir. 1989) (upholding search where arrestee was one block from car), *Rainey*, 197 S.W.3d at 95 (upholding search where arrestee was 50 feet from vehicle), and *Cason v. Commonwealth*, 530 S.E.2d 920, 922, 924 (Va. Ct. App. 2000) (upholding search where arrestee was 50–75 feet from vehicle), with *United States v. Strahan*, 984 F.2d 155, 159 (6th Cir. 1993) (rejecting search where arrestee was 30 feet from car), and *United States v. Garcon*, No. 07 80051-CR, 2008 WL 60405, at *11 (S.D. Fla. Jan. 3, 2008) (rejecting search where arrestee was six feet from car), and *State v. Rathbun*, 101 P.3d 119, 121 (Wash. Ct. App. 2004) (rejecting search where arrestee was 40–60 feet from car).

As to temporal proximity between the arrestee and the car, compare *Mack v. City of Abilene*, No. Civ. A. 104CV050C, 2005 WL 1149807, at *10 (N.D. Tex. May 12, 2005) (upholding search where arrestee had not been in the car for over three hours), *partially vacated on other grounds*, 461 F.3d 547, 552–53 (5th Cir. 2006), with *United States v. Laughton*, 437 F. Supp. 2d 665, 673 (E.D. Mich. 2006) (rejecting search where arrestee “had not been near the vehicle for at least thirty minutes by the time the officers even arrived at the scene”).

been foreclosed. Justice Scalia, joined by Justice Ginsburg, concluded that to uphold such searches under the guise of *Belton* “stretch[ed] [*Belton*] beyond its breaking point.” *Thornton*, 541 U.S. at 625 (Scalia, J. concurring in judgment). Justice O'Connor separately concurred to express her “dissatisfaction with the state of the law in this area,” in particular that “lower court decisions seem now to treat the ability to search a vehicle incident to the arrest of a recent occupant as a police entitlement rather than as an exception justified by the twin rationales of *Chimel*.” *Id.* at 624 (O'Connor, J., concurring). Finally, Justice Stevens, joined by Justice Souter, lamented the lack of a “limiting principle” to the *Belton* doctrine as it has been construed. *Id.* at 636 (Stevens, J., dissenting).

We are aware that most other courts presented with similar factual situations have found *Belton* and *Thornton* dispositive of the question whether a search like the one at issue was incident to arrest. *See e.g.*, *United States v. Mapp*, 476 F.3d 1012, 1014–15, 1019 (D.C. Cir.) (upholding search of arrestee's car conducted after he had been handcuffed and placed in patrol car), *cert. denied*, 75 U.S.L.W. 3695 (Jun. 25, 2007); *United States v. Hrasky*, 453 F.3d 1099, 1100, 1103 (8th Cir. 2006) (same), *cert. denied*, 127 S. Ct. 2098 (2007); *United States v. Osife*, 398 F.3d 1143, 1144, 1146 (9th Cir. 2005) (same); *United States v. Doward*, 41 F.3d 789, 791 (1st Cir. 1994); *United States v. White*, 871 F.2d 41, 44 (6th Cir. 1989); *United States v. Mitchell*, 82 F.3d 146, 152 (7th Cir. 1996); *United States v. Snook*, 88 F.3d 605, 606 (8th Cir. 1996); *United States v. McLaughlin*, 170 F.3d 889, 890 (9th Cir. 1999); *United States v. Humphrey*, 208 F.3d 1190, 1202 (10th Cir. 2000); *United States v. Wesley*, 293 F.3d 541, 544 (D.C. Cir. 2002). We do not, however, read *Belton* or *Thornton* as

abandoning the *Chimel* justifications for the search incident to arrest exception. See *Thornton*, 541 U.S. at 621 (“In all relevant aspects, the arrest of a suspect who is next to a vehicle presents identical concerns regarding officer safety and the destruction of evidence as the arrest of one who is inside the vehicle.”); *Belton*, 453 U.S. at 460 n.3 (“Our 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.”). Because neither *Belton* nor *Thornton* addresses the precise question presented here, we must, if we are to maintain our constitutional moorings, rely on *Chimel*’s rationales in reaching our holding.⁵

The government further asserts that, as a result of our holding, police officers will not secure arrestees until after they have searched the passenger compartment of an arrestee’s vehicle, thus jeopardizing the officers’ safety. We presume that police officers will exercise proper judgment in their contacts with arrestees and will not engage in conduct that creates unnecessary risks to their safety or public safety in order to circumvent the Fourth Amendment’s warrant requirement. In this technological age, when warrants can be obtained within minutes, it is not unreasonable to require that police officers obtain search warrants when they have probable cause to do so to protect a citizen’s right to be free from unreasonable governmental searches.

⁵ Other courts have followed this approach as well. See *Ferrell v. State*, 649 So.2d 831, 833 (Miss. 1995) (holding that search of arrestee’s car conducted after he had been handcuffed and placed in patrol car did not fall within search incident to arrest exception because the rationales underlying the exception were absent); *State v. Greenwald*, 109 Nev. 808, 858 P.2d 36, 37 (1993) (same, citing *Chimel*).

We recognize the importance of providing consistent and workable rules to guide police officers in making decisions in the field. *Belton* sought to address this concern by creating a bright-line rule regarding the scope of automobile searches incident to arrest. The Supreme Court has not, however, adopted a bright-line rule for determining whether a warrantless search of an automobile is justified to begin with. In the absence of such a rule, we look to the circumstances attending the search to determine whether a warrant was required.⁶ And when, based on the totality of the circumstances, an arrestee is secured and thus presents no reasonable risk to officer safety or the preservation of evidence, a search warrant must be obtained unless some other exception to the warrant requirement applies.

⁶ The Dissent suggests that the majority opinion departs from a “straightforward rule” that does not depend on case-by-case adjudication.” But our dissenting colleague concedes that a *Belton* search is proper only if it is “a contemporaneous incident” of the arrest. Determining whether the search is a contemporaneous incident, however, requires the very case-by-case examination of the facts that the Dissent criticizes. See *Preston*, 376 U.S. at 367. Indeed, *Thornton* teaches that a determination that the defendant was a recent occupant of the searched vehicle must also occur before the *Belton* rule regarding the permissible scope of a search applies. *Thornton*, 541 U.S. at 622. Thus, this opinion does not eviscerate any existing bright-line rule; it merely inquires whether an exigency remains to justify the search when the defendant is locked in a police car, just as the Dissent would ask whether the search was reasonably contemporaneous to the arrest, and as the Court in *Thornton* inquired to determine whether the defendant was so recent an occupant as to present the threat of destruction of evidence or access to a weapon. If the exigency justifying a search incident to arrest disappears when the search is not proximate in time to the arrest (or when the arrestee is not a recent occupant of the car), it follows that the justifying exigency would also disappear once the arrestee no longer has any possible access to evidence or weapons.

The State has advanced no alternative theories justifying the warrantless search of Autry's car, and we note that no other exception to the warrant requirement appears to apply. The agents did not have probable cause to search Autry's car for contraband, as is required by the automobile exception. *See Chambers*, 399 U.S. at 51-52. No evidence or contraband was in plain view. *See Coolidge v. New Hampshire*, 403 U.S. 443, 465 (1971) (plurality opinion). Moreover, Autry's car would probably not have been impounded until after they searched the passenger compartment and found the contraband. Thus the search cannot be characterized as an inventory search. *See South Dakota v. Opperman*, 428 U.S. 364, 372 (1976). There being no other exception to the warrant requirement justifying the search of Autry's car, the warrantless search was unlawful.

III. CONCLUSION

For the foregoing reasons, we hold that the warrantless search of Autry's car was not justified by the search incident to arrest exception to the Fourth Amendment's warrant requirement. The evidence obtained as a result of the unlawful search must therefore be suppressed. We reverse the judgment of the district court.

J. MARSHALL, Judge, dissenting

Law enforcement agents immediately confronted Autry when he drove up and got out of his car; within minutes, they arrested him, placed him in handcuffs, and locked him in a patrol car; they then promptly searched his car, where they found a pistol and a bag of cocaine. The majority holds that the warrantless search cannot be justified as incident to Autry's arrest because, at the time of the search, there were

no exigent concerns for either officer safety or the preservation of evidence. Because I believe that the majority's reasoning and conclusion are inconsistent with the Supreme Court's decision in *New York v. Belton*, 453 U.S. 454 (1981), I respectfully dissent. Although there may be good reasons to reconsider *Belton*, doing so is the sole prerogative of the Supreme Court, even if later developments have called into question the rationale for its decision. *See State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997). *Belton* itself was an extension of the Court's holdings in *Chimel v. California*, 395 U.S. 752 (1969), and *United States v. Robinson*, 414 U.S. 218 (1973). In *Chimel*, the Court held that, incident to a lawful arrest, police may properly search the arrestee and the area within the arrestee's "immediate control" without a warrant. *Chimel*, 395 U.S. at 763. Although "*Chimel* searches" are justified by general concerns for officer safety and the preservation of evidence, *see id.*, the *Robinson* Court held that such searches are permissible regardless of whether, in the circumstances of a particular case, "there was present one of the reasons supporting the" exception to the warrant requirement. *Robinson*, 414 U.S. at 235.

The Court in *Belton* considered the application of *Chimel* and *Robinson* when police arrest an occupant or recent occupant of an automobile. There, an officer stopped a car and, having reason to believe the occupants unlawfully possessed marijuana, ordered the driver and his three companions out of the car and placed them under arrest. *Belton*, 453 U.S. at 455-56. After searching each individual, the officer then searched the car's passenger compartment, where he discovered a jacket on the back seat. *Id.* at 456. He opened one of the jacket pockets and found cocaine. *Id.*

Belton upheld the officer's search of the jacket as a valid search incident to arrest even though it occurred after the defendant had been removed from the car and could not reach the jacket. *Id.* at 462–63. The Court first extended the *Chimel* exception to the passenger area of a car by adopting the “generalization” that an arrestee might reach within this area to grab a weapon or destroy evidence. *Id.* at 460. Having defined the area of the suspect’s “immediate control” to include the passenger compartment, the Court went on to hold that “when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment” and “the contents of any containers found within.” *Id.* (footnote omitted).

The search authorized by *Belton* does not depend on a case-specific determination that there may be weapons or evidence in the automobile. Indeed, the Court noted that its holding would allow searches of containers that “could hold neither a weapon nor evidence of the criminal conduct for which the suspect was arrested.” *Id.* at 461. The Court nonetheless concluded that the lawful arrest itself justified the search. Quoting *Robinson*, the Court noted that “[t]he authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would . . . be found.” *Id.*

In holding that the search of Autry’s automobile violated the Fourth Amendment, the majority’s analysis conflicts with *Belton* in several respects. The majority concludes that the search was not incident to Autry’s arrest because the *Chimel* concerns for

officer safety and preservation of evidence were not present.

The validity of a *Belton* search, however, clearly does not depend on the presence of the *Chimel* rationales in a particular case. Indeed, in *Belton*, the New York Court of Appeals, much like the majority here, held that the search could “not be upheld as a search incident to a lawful arrest where there is no longer any danger that the arrestee or a confederate might gain access to the article.” *Belton*, 453 U.S. at 456 (quoting *People v. Belton*, 407 N.E.2d 420, 421 (N.Y. 1980)). In reversing the state court and upholding the search, the Court in *Belton* did not question the state court’s finding that the jacket was inaccessible. Justice Brennan, dissenting in *Belton*, pointedly noted that “the Court today substantially expands the permissible scope of searches incident to arrest by permitting police officers to search areas and containers the arrestee could not possibly reach at the time of arrest.” *Id.* at 466.

Justice Brennan’s dissent, therefore, explicitly made the argument that the majority adopts here. “When the arrest has been consummated and the arrestee safely taken into custody, the justifications underlying *Chimel*’s limited exception to the warrant requirement cease to apply: at that point there is no possibility that the arrestee could reach weapons or contraband.” *Id.* at 465–66. While these observations have force, if they did not persuade a majority of the Supreme Court in *Belton*, I do not think it is appropriate for our Court to effectively rewrite *Belton* as embracing them now.

Belton is also inconsistent with the majority’s focus on the *Chimel* rationales at the time of the search. In *Belton* itself the search did not take place until after the officer had already removed the defendant

from the car. *Belton*, 453 U.S. at 456. The Court did not consider whether one of the *Chimel* rationales was present at the time of the search; instead, the Court noted that the search was justified by the arrest itself. *Id.* at 461. That the jacket was within the passenger compartment in which *Belton* “had been a passenger just before he was arrested,” meant that it was within his “immediate control” for purposes of the search incident to arrest. *Id.* at 462 (emphasis added).

Because a *Belton* search is justified by circumstances that the Supreme Court thought generally exist upon the arrest of the occupant of a vehicle, the validity of the search does not depend on particularized concerns for officer safety or preservation of evidence at the time of the search. Thus, *Belton* rejected the argument that the search of the jacket in that case was improper because it did not occur until after the officer had reduced it to his “exclusive control.” *Id.* at 461 n.5. Recognizing the implications of the Court’s reasoning, Justice Brennan noted, “Under the approach taken today, the result would presumably be the same even if [the officer] had handcuffed *Belton* and his companions in the patrol car before placing them under arrest” *Id.* at 468.

The point noted by Justice Brennan in his dissent has been recognized by nearly every appellate court that has since considered the issue: *Belton* implies that warrantless searches may be conducted even when the arrestee has been handcuffed and locked in a patrol car. See, e.g., *United States v. Hrasky*, 453 F.3d 1099, 1101 (8th Cir. 2006) (stating that the incapacitation of the arrestee does not invalidate a subsequent search incident to arrest under *Belton*), cert. denied, 127 S. Ct. 2098 (2007); *United States v. Weaver*, 433 F.3d 1104, 1107 (9th Cir.)

(concluding that *Belton* controls where the arrestee is handcuffed and locked in a patrol car), cert. denied, 547 U.S. 1142 (2006); *United States v. Wesley*, 293 F.3d 541, 547–49 (D.C. Cir. 2002) (same); *United States v. Humphrey*, 208 F.3d 1190, 1202 (10th Cir. 2000) (same); 3 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 7.1(c), at 517 & n.89 (4th ed. 2004) (listing cases).

That the *Chimel* rationales need not be present in a particular case does not, as the majority contends, mean that police may conduct warrantless searches hours after an arrest. *Belton* upheld the warrantless search of a vehicle’s passenger compartment “as a contemporaneous incident” of the occupant’s arrest. *Belton*, 453 U.S. at 460 (emphasis added). In so ruling, the Court distinguished *United States v. Chadwick*, 433 U.S. 1 (1977), as not involving a search incident to an arrest. See *id.* at 461–62. The post-arrest search in *Belton* was justified because it was incidental to the arrest, not because other exigencies were present that were absent *Chadwick*. Thus, although *Belton* does not require a warrantless search to occur simultaneously with the arrest, it must occur within some temporal proximity. See *Hrasky*, 453 F.3d at 1101 (discussing decisions requiring search to occur “roughly contemporaneous with the arrest” or within a “reasonable time” after police obtain control of the vehicle); *United States v. Butler*, 904 F.2d 1482, 1484 (10th Cir. 1990) (concluding that search of item found in vehicle at police station not contemporaneous with arrest).

The majority also departs from *Belton*’s determination that searches in this context should be guided by a “straightforward rule” that does not depend on case-by-case adjudication. See *Belton*, 453 U.S. at 458–59. The majority concludes that a *Belton*

search is not justified unless, “based on the totality of the circumstances,” there is a “reasonable risk to officer safety or the preservation of evidence.” Such an inquiry can only be made on a case-specific basis, initially by officers in the field and, if a search is later challenged, post hoc by reviewing courts. This approach is at odds with the core premise of *Belton*. See *Thornton v. United States*, 541 U.S. 615, 622–23 (2004) (“The need for a clear rule, readily understood by police officers and not depending on differing estimates of what items were or were not within reach of an arrestee at any particular moment, justifies the sort of generalization which *Belton* enunciated.”).⁷

The bright-line rule embraced in *Belton* has long been criticized and probably merits reconsideration. *Belton* created a significant exception to the Fourth Amendment’s warrant requirement by making a generalization about the exigencies of arrests involving automobiles and then allowing searches whether or not the concerns justifying the exception were present in any particular case. *Belton* thus rests on a “shaky foundation,” *id.* at 624 (O’Connor, J., concurring in part), that has

⁷ *Belton* itself does not completely avoid the need for case-by-case inquiry, inasmuch as the Court limited the exception to searches that are the contemporaneous incident of the arrest of a vehicle’s occupant or recent occupant. Justice Brennan made this very point in his dissent. See *Belton*, 453 U.S. at 469–71. But this does not imply, as the majority contends, that *Belton*’s application should turn on a case-specific finding of exigent circumstances at the time of the search. Nor does *Thornton* suggest that a case-specific assessment of exigent circumstances should determine whether an arrestee is a “recent occupant” for purposes of the *Belton* exception. See *Thornton*, 541 U.S. at 623 (refusing to limit *Belton* to searches in which police initiate contact with suspect as it would involve “inherently subjective” and “highly fact specific” determinations that *Belton* sought to avoid).

become even more tenuous over time. Police officers routinely secure suspects by handcuffing them before conducting *Belton* searches. *Id.* at 628 (Scalia, J., joined by Ginsburg, J., concurring in the judgment) (noting that “[i]f it was ever true that” arrestees generally have access to passenger compartments, “it certainly is not true today”). See generally David S. Rudstein, *Belton Redux: Reevaluating Belton’s Per Se Rule Governing the Search of an Automobile Incident to an Arrest*, 40 WAKE FOREST L. REV. 1287, 1333–34 (2005) (discussing police practices).

But even if *Belton* were to be reconsidered, the approach adopted by the majority is only one of several possible alternatives. See *id.* at 1338–59. Although the majority revives a case-by-case approach focusing on the presence of the *Chimel* rationales at the time of the search, it would also be possible to imagine a bright-line limitation to *Belton*’s bright-line exception. For example, one could argue that a *Belton* search is never justified as “incident to arrest” if it occurs after a suspect is handcuffed outside the vehicle. Or perhaps *Belton* should be limited so it continues to allow searches of the passenger compartment but not containers found therein, see *Thornton*, 541 U.S. at 634 (Stevens, J., joined by Souter, J., dissenting), or even replaced by a rule “built on firmer ground,” *id.* at 625 (O’Connor, J., concurring in part), that would allow warrantless searches when “it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.” *Id.* at 632 (Scalia, J., joined by Ginsburg, J., concurring in the judgment).

We can add our voice to the others that have urged the Supreme Court to revisit *Belton*. See, e.g., *Weaver*, 433 F.3d at 1107 (noting that *Belton* “is broader than its stated rationale” and suggesting that the Supreme

Court re-examine this issue). We cannot, however, take it upon ourselves to re-examine *Belton's* interpretation of the Fourth Amendment. Because *Belton* allows the search of Autry's vehicle, I respectfully dissent.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 2008

THE UNITED STATES OF AMERICA,

Petitioner,

v.

GARRY AUTRY,

Respondent.

On Writ of Certiorari to the Twelfth Circuit Court of Appeals,
United States v. Autry, 987 F.3d 1 (12th Cir. 2007).

Before: ROBERTS, C.J. and STEVENS, SCALIA, KENNEDY, SOUTER, THOMAS,
GINSBURG, BREYER, and ALITO, JJ.

ORDER

The petition for writ of certiorari is hereby GRANTED limited to the following question:

I. Whether the Fourth Amendment requires law enforcement officers to demonstrate a threat to their safety or a need to preserve evidence related to the crime of arrest in order to justify a warrantless vehicular search incident to arrest conducted after the vehicle's recent occupants have been arrested and secured.

Probable jurisdiction is noted and a total of one half hour allotted for oral argument. The briefs of both parties are to be filed with the Clerk of the Court on or before 4:59 p.m. on **Sunday, September 14, 2008**. The case is set for oral argument in the October 2008 term of this Court.