

No. 06-0192

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2008

UNITED STATES OF AMERICA

Petitioner,

v.

GARRY AUTRY

Respondent.

On Writ of Certiorari to the United States Supreme Court

BRIEF FOR THE RESPONDENT

September 14, 2008

Elizabeth Clarke, Stephanie Hager
Counsel for Respondent

First Place
Brief

QUESTION PRESENTED

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.

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STATEMENT OF THE CASE

Gary Autry (Respondent) 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). The charges were precipitated by a warrantless search of Autry's car after the scene was secure and after Autry was handcuffed, seated in the back of a patrol car, and under the supervision of a law enforcement officer. Autry urges this Court to hold this warrantless search unconstitutional under the Fourth Amendment because it does not fall under the search incident to arrest exception to the Fourth Amendment's warrant requirement.

The events leading up to Autry's arrest are as follows: On August 25, 2005, one uniformed FBI agent and one uniformed DEA agent visited a house upon receiving a tip of narcotics activity there. Autry answered the door, and informed the agents that the owner of the residence was not home and would return later that afternoon. After leaving the residence, the agents ran a records check and found 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 returned to the house later that evening, and arrested two individuals associated with the house, Crystal Doyle and Arif Noorani, and immediately secured them both in the back of separate patrol cars. Autry then drove up and parked his vehicle in the driveway of the residence, and as he exited the car, an agent summoned him. Autry walked eight to 12 feet toward the agent, who immediately arrested and handcuffed him. Autry was secured in the back of a patrol car within minutes, and he remained there under the supervision of an agent. At this time, the scene was secure and at least four agents were at the residence.

After Autry was secured in the back of the patrol car, two agents searched the passenger compartment of his car and found a handgun and a plastic baggie containing cocaine. Later, Autry underwent a voluntary drug test, and traces of marijuana were found in his system.

Autry filed a motion to suppress the evidence seized from his car with the United States District Court for the District of Northern Connorgia at New Lexington. Autry argued that the warrantless search of his car violated the Fourth Amendment because the search was not incident to his arrest, as he was not an occupant of the vehicle. Autry asserted that the search was illegal because it failed to satisfy the rationales set forth for dispensing with the warrant requirement in *Chimel v. California*, 395 U.S. 752 (1969).

The District Court declined to adopt Autry's reliance on *Chimel* and held that, under the "straightforward" rule of *New York v. Belton*, 453 U.S. 454, 455 (1981), when an officer executes a lawful custodial arrest of the occupant of an vehicle, he may, as a contemporaneous incident of that arrest, search the passenger compartment of the vehicle. *United States v. Autry*, 587 F. Supp. 3d 1 (N.D. Con'gia 2006). Upon reviewing the circumstances of Autry's arrest, the District Court held that "*Belton*'s bright-line rule is consistent with the 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." *Id.* at 4. The District Court further held that such a search, incident to and contemporaneous with a valid custodial arrest of a recent occupant of a vehicle, is valid "without regard to whether the occupant was removed and secured at the time of the search." *Id.* at 6.

Autry appealed, and the Circuit Court overturned the District Court decision. *United States v. Autry*, 987 F.3d 1 (12th Cir. 2007). Applying the *Chimel* rationales, the Circuit Court

held that neither a concern for law enforcement officer safety nor the preservation of evidence justified the warrantless search of Autry's car, and therefore the search could not be upheld as a lawful search incident to arrest. *Id.* at 4. The Circuit Court distinguished this case from *Belton*, finding that, "Unlike *Belton*, however, this case deals not with the permissible scope of the search of an automobile, but with the threshold question of whether the police may conduct a search incident to arrest at all once the scene is secure." *Id.* The Court further highlighted the fact that, unlike in *Belton* where the driver and passengers stood by unrestrained while the officer search the vehicle's passenger compartment, Autry was completely secured in the back of a patrol car. *Id.*

This Court granted United States' petition for a writ of certiorari.

SUMMARY OF THE ARGUMENT

The Fourth Amendment of the United States Constitution limits the discretion of police and government agents who may violate an individual's liberty, privacy and possessory rights by requiring law enforcement officers to obtain a warrant before intruding upon an individual's rights. However, the Supreme Court recognizes a "search incident to a lawful arrest" as one exception to the Fourth Amendment's warrant requirement. *Chimel v. California*, 395 U.S. 752 (1969), established the current standard for a search incident to a lawful arrest. There the Court justified the warrantless intrusion into an individual's Fourth Amendment protected interests, finding that these concerns were outweighed by the twin exigencies of the need to protect officers and preserve evidence. *Chimel*, 395 U.S. at 755.

Petitioner asserts that the "bright-line" rule established in *New York v. Belton*, 453 U.S. 454, 455 (1981), dispenses with the need for *Chimel*'s fact-specific area of immediate control

test. The petitioner's reliance on *Belton* is erroneous and premature, as the true issue in this case deals not with the permissible scope of the search of an automobile, but with the *threshold question* of whether the police may conduct a search incident to arrest *at all* once the scene is secure. The respondent argues that when 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 a law enforcement officer, the warrantless search of the arrestee's car cannot be justified by a concern for exigent circumstances.

The respondent further argues that 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. A warrantless search must be justified by some other independent exception to the warrant requirement or else it is unlawful. The respondent argues that the search of Autry's car was unlawful, and the evidence yielded from that search must be suppressed. The respondent requests this Honorable Court to affirm the decision of the 12th Circuit.

ARGUMENT

II. THE GOVERNMENT'S WARRANTLESS SEARCH OF RESPONDENT'S CAR IS PRESUMPTIVELY UNREASONABLE UNDER THE FOURTH AMENDMENT

The Fourth Amendment of the United States Constitution guarantees the right of citizens to be free from unreasonable governmental searches. U.S. CONST. amend. IV. The warrant requirement of the Fourth Amendment creates a presumption that wherever possible, a judicial officer should authorize searches and seizures ahead of time. *Id.* The Fourth Amendment was

intended to limit the discretion of police and government agents who may violate an individual's liberty, privacy and possessory rights. See ANDREW E. TASLITZ, MARGARET L. PARIS, AND LENESE C. HERBERT, CONSTITUTIONAL CRIMINAL PROCEDURE 96 (2007).

The Amendment's protections reach all citizens, even those facing accusation of a crime, and it effectively limits police officials in the exercise of their power and security to search under the guise of the law. *Weeks v. United States*, 232 U.S. 383, 392 (1914). In *Weeks*, the Court interpreted the Warrant Clause to require that a United States Marshal "[c]ould only have invaded the house of the accused when armed with a warrant issued as required by the Constitution, upon sworn information, and describing with reasonable particularity the thing for which the search was to be made." *Id.* at 393. The Court held in *Katz v. United States* that the Fourth Amendment "protects individual privacy against certain kinds of governmental intrusion, but its protections go further, and often have nothing to do with privacy at all." *Katz v. United States*, 389 U.S. 347, 350 (1967). *Katz* effectually created a presumption of Fourth Amendment violation when police infringe on an individual's privacy interests without the authorization of a warrant. As such, "subject 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. *Id.* at 357.

III. THE SEARCH INCIDENT TO ARREST EXCEPTION TO THE WARRANT REQUIREMENT CANNOT JUSTIFY A WARRANTLESS SEARCH IN THE ABSENCE OF EXIGENT CIRCUMSTANCES

The Supreme Court recognized a "search incident to a lawful arrest" as one of these exceptions to the Fourth Amendment's warrant requirement. See, e.g., *Weeks*, 232 at 392 (1914)

(articulating in dictum approval of a warrantless search incident to lawful arrest); *Carroll v. United States*, 267 U.S. 132, 158 (1925) ("[W]hatever is found upon his person or in his control which it is unlawful for [a legally arrested man] to have . . . may be seized and held as evidence."); *Agnello v. United States*, 269 U.S. 20, 46 (1925) (expanding the exception to include the assertion that the "place" where one is arrested may be searched so long as the arrest is valid). The Court has balanced the individual's Fourth Amendment protected interests against the state's interests in effective law enforcement. The search incident to arrest exception exists because the Court recognized that the state's interests become more compelling in certain situations when concern for officer safety and evidence preservation outweigh the individual's privacy interests.

A. The *Chimel* "Immediate Control" Standard Governs the Warrantless Search of Respondent's Car

Chimel v. California, 395 U.S. 752 (1969), established the current standard for a search incident to a lawful arrest. There the Court justified the warrantless intrusion into an individual's Fourth Amendment protected interests, finding that these concerns were outweighed by the twin exigencies of the need to protect officers and preserve evidence. *Chimel*, 395 U.S. at 755. The Court reasoned that 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 to effect his escape," in order to ensure the officer's safety. *Id.* at 763. Also, it is reasonable for the officer to search not only the arrestee's person for evidence, but also "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." *Id.* See also *Knowles v. Iowa*, 525 U.S. 113, 116 (1998) (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"); *Thornton v. United States*, 541 U.S. 615, 620 (2004) (reiterating *Chimel*'s 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 these 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," or in other words, "the area from within which he might gain possession of a weapon or destructible evidence." *Chimel* 395 U.S. at 763. When applying this test to automobile searches incident to arrest, the Court employs a fact-based inquiry into whether particular areas or objects in the passenger compartment are within the arrestee's area of immediate control.

B. The Concerns for Law Enforcement Officer Safety and Preservation of Evidence Do Not Justify the Warrantless Search

Chimel placed the burden of proof on the government to justify any exception to the Warrant Clause of the Fourth Amendment, and it limited the scope of a search incident to an arrest in light of the Amendment's presumption against warrantless searches. The *Chimel* standard is significant, because a police officer cannot conduct a lawful warrantless search unless "the exigencies of the situation [make] that course imperative." *Chimel*, 395 U.S., 760-61 (quoting *McDonald v. United States*, 335 U.S. 451, 455-56 (1948)). *Chimel*'s rule ensures that an individual's privacy interests are protected, and that those privacy interests must give way only when the police have a legitimate need to protect themselves or to protect evidence from disappearing.

Considerations for the safety of the arresting law enforcement officer and preservation of evidence, the twin exigencies established in *Chimel*, are not present in this case and therefore do not justify the warrantless search of Autry's car. In this case, when Autry's car was searched, he was neither in, nor anywhere near, the passenger compartment of his vehicle. In fact, Autry was handcuffed, seated in the back of a locked patrol car, and under the supervision of a law enforcement officer. The two other arrestees at the scene were also handcuffed and detained in patrol cars, and there were no unsecured civilians in the vicinity. *Autry*, 587 F. Supp. at 1-2. At least four agents were on the scene, and there is no indication in the record that the police had any reason to believe that the agents' safety was at risk, or that any evidence was vulnerable to tampering. *Id.*

Under these circumstances, the risk that Autry would grab a weapon from his car was "remote in the extreme." *Thornton*, 541 U.S. at 625 (Scalia dissenting). Petitioner's argument that Autry, despite being secured in the back of the police car, might have escaped and brandished a weapon or tampered with evidence, is speculative and outlandish. Any reasonable interpretation of the circumstances would find that the area within Autry's control at the time of this search was no more than his person. Indeed, the argument that Autry still posed a risk to the safety of the officers or to the preservation of evidence would require him to be "possess of the skill of Houdini and the strength of Hercules," which the record establishes he certainly does not. *United States v. Frick*, 490 F.2d 666, 673 (C.A.5 1973). To be sure, "the idea of legerdemain cannot create the justification for a warrantless search." *Id.*

IV. PETITIONER'S RELIANCE ON *BELTON* IS PREMATURE, AS THE THRESHOLD REQUIREMENT ESTABLISHED BY *CHIMEL* HAS NOT BEEN MET

Petitioner asserts that the "bright-line" rule established in *New York v. Belton*, 453 U.S. 454, 455 (1981), dispenses with the need for *Chimel*'s fact-specific area of immediate control test. In *Belton*, the Court determined the scope of a search incident to the arrest of occupants of a motor vehicle. *Belton* expanded *Chimel*'s "immediate control" rule, holding that "when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *Belton*, 453 U.S. at 460. Containers found within the car's passenger compartment, "whether opened or closed," are also included in the scope of the search, although items stowed in a trunk are not. *Id.*

This ruling thus created a bright-line rule for searches of motor vehicles incident to a lawful arrest. The Court's decision in *Thornton v. United States*, 541 U.S. 615 (2004), further extended *Belton*'s rule, holding that *Belton* "governs even when an officer does not make contact until the person arrested has left the vehicle." *Thornton*, 541 U.S. at 617. Again, the Court justified its judgment by citing *Chimel*'s concerns for officer safety and evidence preservation in searches incident to arrest cases. As such, *Belton*'s bright-line rule currently applies in situations not only when an arrestee is physically occupying the vehicle, but also when he has "recently occupied" the vehicle when the arresting officer first makes contact. *Thornton*, 541 U.S. at 617.

A. *Belton*'s Bright-Line Rule Cannot Justify an Unconstitutional Intrusion upon an Individual's Privacy Rights in His Automobile Once the Scene of the Arrest is Secure

Petitioner argues that *Belton*'s straightforward rule made it clear that when an officer executes a lawful custodial arrest of the occupant of a vehicle, he may, as a contemporaneous incident of that arrest, search the passenger compartment of the vehicle. As a result, the twin exigencies of *Chimel* are presumed to have been present, and the warrantless search of Autry's vehicle was permissible.

However, Petitioner's reliance on *Belton* is erroneous and premature, as the true issue in this case "deals not with the permissible scope of the search of an automobile, but with the *threshold question* of whether the police may conduct a search incident to arrest *at all* once the scene is secure." *United States v. Autry*, 587 F. Supp. 3d at 4 (emphasis added). Indeed, Petitioner's effort to apply *Belton*'s bright-line rule to this search "stretches it beyond its breaking point." *Thornton*, 541 U.S. at 625. Instead, this Court's inquiry must be whether officer safety or the preservation of evidence, the rationales established in *Chimel*, justified the warrantless search of Autry's car. As set forth below, neither rationale supports the warrantless search here. As neither a concern for law enforcement officer safety nor the preservation of evidence justified the warrantless search of Autry's car, the search cannot be upheld as lawful search incident to arrest.

In his dissenting opinion in *New York v. Belton*, Justice Brennan argued, "[w]hen 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." *Belton*, 453 U.S. at 466.

**B. Petitioner's Reliance on *Belton*'s Bright-Line Rule Further Fails Because
Chimel's Exigencies Must Exist at the Time of the Search**

Petitioner argues 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. However, if no exigency is required to justify the warrantless search, it would follow that a warrantless search incident to an arrest could be conducted hours – indeed, any time – after the arrest. *Autry*, 587 F. Supp. at 5. However, even *Belton* recognized that a search more than an hour after arrest could not be justified as incidental to the arrest. *Belton*, 453 U.S. at 462. *See also United States v. Chadwick*, 433 U.S. 1, 15 (1977).

Moreover, it is well established precedent that *Chimel*'s exigencies are "measured at the time of search." *Cabell v. Rousseau*, 130 F. App'x 803, 806 (7th Cir. 2005). Accordingly, a search must be justified by *Chimel*'s twin exigency rationales when it is commenced, and thus it must be limited to the areas into which the arrestee conceivably could reach at that time. In this case, the justifications underlying *Chimel* no longer existed at the time of the search because the scene was sufficiently secured and *Autry* was handcuffed, secured in the back of a patrol car, and under the supervision of a law enforcement officer.

Thus, as neither a concern for law enforcement officer safety nor the preservation of evidence justified the warrantless search of *Autry*'s car, the search cannot be upheld as a lawful search incident to arrest.

C. *Belton*'s Bright-Line Rule is Not Applicable to the Factual Circumstances in this Case

In *Belton*, 453 U.S. at 460 (1981), the Court set forth a bright-line rule for arrests of automobile occupants, holding that, because the vehicle's entire passenger compartment is "in fact generally, even if not inevitably," within the arrestee's immediate control, a search of the whole compartment is justified in every case. *Thornton*, 541 U.S. at 625 (Scalia dissenting).

The *Belton* Court reasoned that "[w]hen a person cannot know how a court will apply a settled principle to a recurring factual situation, that person cannot know the scope of his constitutional protection, nor can a policeman know the scope of his authority." *Belton*, 453 U.S. at 460.

Highlighting the inconsistent conclusions that lower courts had reached when applying the *Chimel* rule to searches of the passenger compartment of an automobile incident to an arrest, the Court sought to implement a "workable rule" to govern these cases. *Id.*

However, in the present case, Autry was not arrested pursuant to a traffic stop or other roadside arrest. In contrast, the Court of Appeals noted that *Belton* "dealt with a markedly different set of circumstances from those present in this case." *Autry*, 987 F.3d at 5. In his *Thornton* dissent, Justice Stevens, joined by Justice Souter, argued that *Belton* worked within the context of an arrest of a suspect who was "seated in or driving" an automobile when officer contact was first established. *Thornton*, 541 U.S. at 635 (Stevens, J. dissenting). According to Stevens, "Belton provided previously unavailable and therefore necessary guidance for that category of cases." *Id.* at 636. However, "[t]he bright-line rule crafted in *Belton* is not needed for cases in which the arrestee is first accosted when he is a pedestrian, because *Chimel* itself provides all the guidance that is necessary." *Id.*

The circumstances of Autry's case are distinguishable from those of *Belton*. "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." *Autry*, 987 F.3d at 5. The Circuit Court found that the warrantless search of Autry's car was justified neither by *Belton* nor the *Chimel* standard: "Here . . . 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." *Autry*, 987 F.3d at 5. "*Belton*," the court concluded, "therefore does not support a warrantless search on the facts of this case." *Id.*

CONCLUSION

For the foregoing reasons, the Respondent requests this Honorable Court to affirm the decision of the 12th Circuit.