

No. 08-4170

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

THE UNITED STATES OF AMERICA,

Petitioner,

v.

GARRY AUTRY,

Respondent.

Second Place
Brief

On Writ of Certiorari to the United States Supreme Court

BRIEF FOR THE RESPONDENT

September 14, 2008

Benton Keatley & Andrew Finnicum
Counsel for Respondent

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

On August 25, 2005, two uniformed federal agents went to a house after receiving a tip concerning narcotics activity there. When the agents asked to speak with the owner of the residence, Autry informed them that the owner was not home, but would be later that afternoon. The agents later 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 returned to the house later that evening with probable cause to arrest Autry and two others.

Upon the agents' return, they immediately arrested Doyle and Noorani and secured them in the back of separate patrol cars. After the arrests, Autry drove up and parked his car in the driveway. He exited his car and walked eight to twelve feet toward a beckoning agent, who immediately arrested and handcuffed him. Within minutes, the agents locked Autry 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. Nothing in the record suggests that there were any people in the vicinity besides Autry, Doyle, Noorani, and the agents. Two agents then searched the passenger compartment of Autry's car, thereby discovering a handgun and a plastic baggie containing cocaine. Autry was charged with two drug related charges. Respondent filed a motion in the district court below to suppress the evidence seized from his vehicle.

The District Court conducted an evidentiary hearing, determining that Autry was a recent occupant of the automobile. The court thus held that the search was permissible and allowed the evidence into trial. Autry was convicted and appealed, arguing that the district court erroneously denied his motion to suppress the evidence.

The Circuit Court reversed and distinguished this case from *Belton*, holding that the agents were unjustified in performing the warrantless search under the *Chimel* analysis. The court ruled that Autry was not a recent occupant of the vehicle. The Court further noted that no exigencies

existed to allow warrantless search of Autry's vehicle.

This Court granted the United States petition for certiorari.

SUMMARY OF THE ARGUMENT

The Fourth Amendment protects citizens from unreasonable searches and seizures committed by the government. Searches without a warrant are *per se* unreasonable under the Fourth Amendment. While this Court has carved a few limited exceptions from the warrant requirement, these exceptions are narrowly drawn and jealously guarded. This high level of independent judicial review is necessary to protect citizens from unreasonable searches committed by an often overzealous executive branch.

One court-created exception to the warrant requirement is the search incident to arrest exception. The exception permits a warrantless search of an arrestee's person when he is lawfully arrested. This exception extends to the area within the reach and control of the arrestee. This Court then extended the exception in the context of vehicle searches, creating a legal fiction that presumes that the entirety of the passenger compartment of an arrestee's vehicle is within his control when he is a recent occupant of the vehicle. The Court's primary justifications for this exception are officer safety and the preservation of evidence that the arrestee could attempt to conceal or destroy. When these exigencies are not present, the exception terminates, and a warrant is then required. The Court should not broaden this exception.

The *Belton* exception does not apply to this case for two reasons. First, respondent was not a recent occupant of the automobile when he was arrested and when the search commenced. This Court has never ruled before—nor should it now—that an arrestee in respondent's position was a recent occupant of his automobile. Second, the fact that the agents in this case planned in advance the arrest and confrontation with respondent distinguishes this case from the typical

roadside arrest and demonstrates that the agents had time to procure a search warrant.

Should this Court decide that *Belton* applies on the facts of this case, it should overrule *Belton*. Such a broad exception would violate fundamental rights, encourage police misconduct, and further spread the very confusion among lower courts that the *Belton* Court attempted to resolve. *Belton*'s alleged bright line rule no longer exists, if indeed it ever did.

Thus, this Court should decide this case based on *Chimel*'s limited search incident to arrest analysis. Because there is no evidence in this case that the agents were in danger or that the evidence seized could have been concealed or destroyed by respondent, the warrantless search fails to satisfy either of *Chimel*'s exigencies. This Court should affirm the Twelfth Circuit and find the fruits of the unconstitutional search inadmissible in a court of law.

ARGUMENT

I. THE *BELTON* RULE MUST BE READ NARROWLY.

A. All exceptions to the warrant requirement must be narrowly construed.

The Court has a duty to protect respondent's Fourth Amendment rights by permitting only those exceptions to the warrant requirement which are absolutely necessary. "[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967). "The exceptions are jealously and carefully drawn, and there must be a showing by those who seek exemption . . . that the exigencies of the situation made that course imperative. [T]he burden is on those seeking the exemption to show the need for it." *Coolidge v. New Hampshire*, 403 U.S. 443, 455 (1971) (plurality opinion) (internal quotation marks and footnote omitted) (alteration in original). Additionally, a warrantless search must be "strictly circumscribed by the exigencies which

justify its initiation.” *Terry v. Ohio*, 392 U.S. 1, 26 (1968). The Court has further admonished that “the mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment.” *Mincey v. Arizona*, 437 U.S. 385, 393 (1978). The Constitution interposes a neutral magistrate between the citizen and an overzealous executive engaged in the competitive enterprise of crime control. *See Coolidge*, 403 U.S. at 450-54. This Court should not “excuse the absence of a search warrant without a showing by those who seek exemption from the constitutional mandate that the exigencies of the situation made that course imperative.” *Chimel v. California*, 395 U.S. 752, 761 (1969) (quoting *McDonald v. United States*, 335 U.S. 451, 456 (1948)). This Court should not delegate the protection of Fourth Amendment rights to the executive branch. “It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.” *Coolidge*, 403 U.S. at 454 (internal quotation marks and citation omitted).

B. A broadly interpreted search incident to arrest exception would critically undermine the Fourth Amendment.

An expanded *Belton* exception would give constitutional affirmation to the executive department’s continual attack on the warrant requirement of the Fourth Amendment. This Court should prevent the undermining of such a fundamental constitutional right. As the Court noted previously, the argument against a warrant requirement in cases such as this “is founded on little more than a subjective view regarding the acceptability of certain sorts of police conduct, and not on consideration relevant to Fourth Amendment interests. Under such an unconfined analysis, Fourth Amendment protection in this area would approach the evaporation point.” *Chimel*, 395 U.S. at 764-65. In *Chimel*, the Court specifically limited the search incident to arrest exception to two exigent circumstances: protecting the officer making the arrest and preventing the

destruction of evidence. *See id.* at 763. However, the Court explicitly stated that the exception must be limited to the area within the reach of the arrestee or his companions. *See id.* at 765-66.

In addition, the Court warned against expansion of the warrant exception, stating as follows:

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

Id. at 766. When the *Belton* Court applied *Chimel* to determine the scope of a search of an automobile incident to an occupant's arrest, the Court carefully noted that its decision "in no way alters the fundamental principles established in the *Chimel* case regarding the basic scope of searches incident to lawful custodial arrests." *New York v. Belton*, 453 U.S. 454, 460 n.11 (1981). Regarding expansion of the warrant exception, the Court of Appeals for the Tenth Circuit noted that such unnecessary expansions would "demonstrate that the legacy of *Belton* is that 'the rationales behind the search incident to arrest exception have been abandoned['] . . . and as other cases have shown, even the supposed clarity of the bright line rule has proved illusory as 'little certainty remains.'" *United States v. Humphrey*, 208 F.3d 1190, 1202 n.8 (10th Cir. 2000) (quoting *United States v. McLaughlin*, 170 F.3d 889, 894 (9th Cir. 1999) (Trott, J., concurring) (arguing that an expanded exception "approves of purely exploratory searches of vehicles during which officers with no definite objective or reason for the search are allowed to rummage around in a car to see what they might find.")).

In this case, petitioner asks this Court to expand, yet again, the search incident to arrest exception to the warrant requirement. Petitioner not only fails to show that exigent

circumstances required the officers to conduct a warrantless search of respondent's vehicle, but also claims that it need not show any exigent circumstances. *See generally United States v. Autry*, 587 F. Supp. 3d 1 (N.D. Con'gia 2006). However, "[t]he exceptions cannot be enthroned into the rule." *Coolidge*, 403 U.S. at 471 n.27. *Belton* and its progeny need not be read so broadly; in fact, their very language denies such an interpretation. Therefore, this Court should find that the *Belton* search incident to arrest exception does not extend to cases where an arrestee is restrained inside a guarded patrol car and the scene of the arrest has been secured.

II. THIS CASE DIFFERS FROM *BELTON* BECAUSE RESPONDENT WAS NOT A RECENT OCCUPANT OF HIS VEHICLE WHEN HE WAS ARRESTED.

A. The Supreme Court has not previously addressed this issue.

Once the officers involved in an arrest handcuff the arrestee, place him in a locked patrol car under armed government supervision, and completely secure the surrounding area, the arrestee can no longer be considered a recent occupant of the vehicle being searched. While petitioner contends that this issue was settled in its favor by *Belton* and *Thornton v. United States*, 541 U.S. 615 (2004), this Court has steadfastly declined to address the issue until now. In *Belton*, the court applied the *Chimel* principles to an automobile search conducted when the occupant of a vehicle was lawfully arrested. *See Belton*, 453 U.S. at 460. The Court declared a bright line rule 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.* However, the facts of *Belton* varied greatly from this case. The officer in *Belton* could see evidence of drug use in plain view inside the vehicle. *Id.* at 455-56. Additionally, the officer in *Belton* was outnumbered four to one, with the four unfettered arrestees standing around the vehicle while it was being searched. *See id.*; *United States v.*

Autry, No. CR-06-0317 at *3 (12th Cir. 2007) (explaining the facts and rationale of *Belton*). In *Thornton*, the Court held that the *Belton* rule also applied to recent occupants of a vehicle who were standing next to their vehicle when they were arrested. *Thornton*, 541 U.S. at 619.

However, the facts in *Thornton* differed from this case. Thornton's license tags did not match the vehicle that he was driving. *Id.* at 618. He appeared nervous and began rambling, licking his lips, and sweating. *Id.* Concerned for his safety, the officer involved obtained consent to pat down Thornton, revealing that Thornton had lied about not possessing any narcotics. *Id.* Thus, fearing his safety and knowing that the arrestee lied about possessing illegal drugs, the officer was justified in making a warrantless search by both of *Chimel*'s exigencies. Importantly, Thornton conceded that he was in "close proximity, both temporally and spatially," to his vehicle. *Id.* at 619. Due to this concession and the limited certiorari petition, the Court declined to address the argument that arrestees out of reach of their vehicle were no longer recent occupants. *Id.* at 622.

In contrast, in this case respondent was arrested for an offense unrelated to his automobile. See *United States v. Autry*, No. CR-06-0317 *1-*2 (12th Cir. 2007). He was arrested after he was already out of reach of the vehicle. See *id.* (noting that Autry was eight to twelve feet from the vehicle when arrested). At least four agents were at the scene, and the two other arrestees had been subdued prior to Autry's arrival. *Id.* One agent even testified that the scene was secure prior to the start of the search. *Id.* at *4. Thus, the issue in this case has not been previously considered by this Court.

B. *Belton*'s rule does not apply in this case because since respondent was handcuffed and secured out of reach of his vehicle at the time of his search.

In this case, respondent was not a recent occupant of the vehicle when the search commenced.

Therefore, the underlying reasons for the exception expressed first in *Chimel* and expanded upon in *Belton* do not permit the search in question. Five justices of the Court expressed varying levels of agreement with that conclusion in *Thornton*.

[C]onducting a *Chimel* search is not the Government's right; it is an exception-justified by necessity-to a rule that would otherwise render the search unlawful. If 'sensible police procedures' require that suspects be handcuffed and put in squad cars, then police should handcuff suspects, put them in squad cars, and not conduct the search.

Thornton, 541 U.S. at 627 (2004) (Scalia and Ginsburg, JJ., concurring). In *Thornton*, Justices Scalia and Ginsburg further noted that the government failed to show one instance where an arrestee restrained like *Autry* endangered the safety of the surrounding officers with a weapon retrieved from his own car. *Id.* at 626-27. In addition to the varying opinions among the justices of this Court, the lower federal and state courts have struggled to interpret the *Belton* rule in cases where an arrestee has already been handcuffed and placed in a patrol car. Compare *Autry* at *6 n.3 (examining multiple state and federal cases holding that the warrant exception only extends to the places or effects within the arrestee's reach), with *id.* at *8 (listing cases upholding the constitutionality of a search similar to the one in question here). The Circuit Court of Appeals for the District of Columbia asks whether "the area in question, at the time it was searched, [was] conceivably accessible to the arrestee—assuming that he was neither 'an acrobat [nor] a Houdini.'" *United States v. Lyons*, 706 F.2d 321, 330 (D.C. Cir. 1983) (footnote omitted) (second alteration in original). Some circuits have extended *Belton* to similar searches while calling for the decision to be overruled. See *United States v. Humphrey*, 208 F.3d 1190, 1202 (10th Cir. 2000) (noting that the purposes of the search incident to arrest exception have been lost in the post-*Belton* confusion); *United States v. McLaughlin*, 170 F.3d 889, 894 (9th Cir.

1999) (Trott, J., concurring) (upholding the search while calling for a reexamination of the issue). Furthermore, general Fourth Amendment principles still apply. “Even where exigent circumstances existed to conduct a search or effect an arrest at some earlier moment, [a] warrant will be required as soon as those exigent circumstances pass.” *Fisher v. City of San Jose*, 509 F.3d 952, 961 (9th Cir. 2007) *reh’g granted*, 519 F.3d 908 (9th Cir. 2008). “[W]hen no exigency is shown to support the need for an immediate search, the Warrant Clause places the line at the point where the property to be searched comes under the exclusive dominion of police authority.” *United States v. Chadwick*, 433 U.S. 1, 15 (1977), *overruled on other grounds by California v. Acevedo*, 500 U.S. 565 (1991).

In this case, Autry was outside the realm of searches that *Belton* authorized. Autry was out of reach of his car when arrested. He was already handcuffed in the patrol car when the search began. It would defy logic for Autry to legally occupy his own car while factually occupying the patrol car. Once the scene of the arrest and the vehicle in question were under the exclusive control of the agents, the agents lacked any justification for not obtaining a search warrant. Neither the safety of the agents, nor the existence of any evidence, were in danger. An arrestee in Autry’s position cannot be considered a recent occupant of a vehicle for purposes of the *Belton* analysis because he cannot access the vehicle.

III. THE FACT THAT THE AGENTS PRE-PLANNED TO ARREST AUTRY DISTINGUISHES THIS CASE FROM *BELTON*.

When federal agents pre-plan to arrest a citizen and intend to perform a search incident to arrest, they have no reason not to get a warrant ahead of time. In *Coolidge*, the Court found that when officers know for some time prior to the search that they intend to search an automobile involved in the alleged crime, the officers are required to get a warrant prior to the search. *See*

id. at 478 (explaining there is no exigent circumstances where officers know in advance they intend to search a vehicle). In addition, the Court reasoned that “there is a significant constitutional difference between stopping, seizing, and searching a car on the open highway, and entering private property to seize and search an unoccupied, parked vehicle not then being used for any illegal purpose.” *Id.* at 464. In this case, the agents, in uniform, had conversed with Autry earlier in the day. After that conversation, they discovered that Autry had an outstanding warrant for his arrest. Rather than obtain a warrant to search his vehicle, they proceeded without one. In addition, Autry knew that agents were watching the home where the arrest occurred. He could easily assume that the agents would return later. He already had time to destroy any evidence in his vehicle that he wished to destroy. Thus, the exigencies claimed by the government were even more diminished. This was not the dangerous traffic stop that occurred in *Belton*, was about to occur in *Thornton*, and concerned the District Court below. *See United States v. Autry*, 587 F. Supp. 3d 1, 5 (N.D. Con’gia 2006). This was a pre-planned arrest where the agents had no reason not to obtain a search warrant prior to returning to the house to arrest Autry. For this reason, *Belton* is distinguishable.

IV. IF *BELTON* REACHES THIS CASE, THE COURT SHOULD OVERRULE *BELTON* SUCH THAT THE *CHIMEL* ANALYSIS GOVERNS THIS CASE.

The United States Court of Appeals for the Twelfth Circuit correctly held that a warrantless search is not justified under the search incident to arrest exception when an arrestee has been handcuffed and secured in a patrol car under police supervision and the scene of the arrest is secure. *Autry*, No. CR-06-0317 at *1. If this Court finds that *Belton* can justify such a search, *Belton* should be overruled.

A. The Fourth Amendment Requires That a Neutral Magistrate Determine

Whether a Search Is Reasonable Whenever Possible.

The Framers wrote the Fourth Amendment mindful of the abuse inherent in the broad authority conferred in “general warrants.” *See Payton v. New York*, 445 U.S. 573, 583 (1980) (“It is familiar history that indiscriminate searches and seizures conducted under the authority of ‘general warrants’ were the immediate evils that motivated the framing and adoption of the Fourth Amendment.”); *Stanford v. Texas*, 379 U.S. 476, 482 (1965) (“[I]t would be a needless exercise in pedantry to review again the detailed history of the use of general warrants as instruments of oppression . . .”). As stated by Justice Jackson in *Johnson v. United States*, 333 U.S. 10 (1948):

The point of the Fourth Amendment . . . is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. *Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate* instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.

Id. at 13-14 (emphasis added).

B. The *Belton* rule invites abuse of the search incident to arrest exception.

The predicate of the *Belton* rule is a “lawful custodial arrest” of a vehicle’s occupant. *See Belton* 453 U.S. at 460. Courts have found a wide variety of offenses sufficient for custodial arrests that trigger the *Belton* exception. In *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001), the Court determined that, “[i]f an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender.” *Id.* at 354. The Court held that a motorist’s rights were not violated when she was placed under custodial arrest for her failure to wear a seatbelt. *Id.*

Lower courts have endorsed a similarly expansive use of custodial arrests for minor offenses in validating warrantless searches incident to those arrests. *See United States v. McFadden*, 238 F.3d 198 (2d Cir. 2001) (upholding warrantless search incident to arrest for juvenile curfew violation); *United States v. Herring*, 35 F. Supp. 2d 1253 (D. Or. 1999) (same for littering offense); *People v. Allibalogun*, 727 N.E.2d 633 (Ill. 2000) (same for riding a bicycle on a sidewalk). Additionally, the Court will not inquire into the “actual motivations of the individual officers involved” in determining whether there is probable cause to arrest. *See Whren v. United States*, 517 U.S. 806, 813 (1996). This effectively allows for even the most pre-textual arrest to justify a warrantless search.

As the *Coolidge* Court cautioned, “illegitimate and unconstitutional practices get their first footing . . . by silent approaches and slight deviations from legal modes of procedure . . . [i]t is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.” *Coolidge*, 403 U.S. at 454 (internal quotation and citation omitted). This Court should not continue to affirm an expanded view of *Belton*, a rule that has encroached upon Fourth Amendment protections by allowing warrantless searches incident to pre-textual arrests for petty offenses. *See also Robbins v. California*, 453 U.S. 420, 450 (1981), *overruled on other grounds by United States v. Ross*, 466 U.S. 798 (1982) (“As a matter of constitutional law . . . any person lawfully arrested for the pettiest misdemeanor may be temporarily placed in custody.”) (Stevens, J., dissenting). If applied here, *Belton* has indeed produced an exception to the warrant requirement that has swallowed the rule.

C. *Belton* failed to establish a bright line rule as lower courts have struggled to apply *Belton* consistently.

The *Belton* Court cited inconsistent lower court opinions in support of the mandate for a

clearer rule on vehicle searches incident to arrest. *See Belton*, 453 U.S. at 459 (citing cases). This argument was dubious—and inconsistent—in light of other Fourth Amendment precedent. *See Ohio v. Robinette*, 519 U.S. 33, 34 (1997) (“The [Fourth] Amendment’s touchstone is reasonableness . . . measured in objective terms by examining the totality of the circumstances . . . [T]he Court has consistently eschewed bright-line rules, instead emphasizing the fact-specific nature of the reasonableness inquiry.”). Thus, this Court should reevaluate the argument of *Belton*’s supporters that it provided a “workable rule.”

Courts have struggled to give substance to *Belton*’s requirement that a warrantless search be “contemporaneous” with the arrest, producing opinions as inconsistent as those cited by the *Belton* Court; some of which even suggest a “fact-intensive” inquiry is necessary to apply *Belton*. *See United States v. Hrasky*, 453 F.3d 1099, 1102 (8th Cir. 2006) (determining whether arrest is contemporaneous under *Belton* is “not strictly [focused] on the timing of the search *but its relationship to (and reasonableness in light of) the circumstances of arrest*”) (internal quotation omitted) (emphasis added); *United States v. Ramos-Oseguera*, 120 F.3d 1028, 1036 (9th Cir. 1997) (search not “roughly contemporaneous” where it occurred an indeterminate amount of time after defendants had been taken to police station but prior to vehicle being towed); *United States v. Han*, 74 F.3d 537, 543 (4th Cir. 1996) (“The determinative question [on whether a search is incident to arrest] appears to be whether the time and distance between elimination of the danger and performance of the search were reasonable.”); *United States v. Moorehead*, 57 F.3d 875, 878 (9th Cir. 1995) (search valid where defendant handcuffed and placed in vehicle immediately prior to search of vehicle); *United States v. Vasey*, 834 F.2d 782, 787 (9th Cir. 1987) (search not “roughly contemporaneous” to arrest where defendant handcuffed and placed in police car and held thirty to forty-five minutes prior to search); *Wyatt*

v. Slagle, 240 F. Supp. 2d 931 (S.D. Iowa 2002) (search contemporaneous to arrest where arrestee searched upon arrival at station). Thus, the bright line rule of *Belton* no longer exists, if indeed it ever did. As the then-Justice Rehnquist noted, “any search for ‘bright lines’ . . . is apt to be illusory. Our entire profession is trained to attack ‘bright lines’ the way hounds attack foxes. [Later court decisions] soon break[] down what might have been a bright line into a blurry impressionistic pattern.” *Robbins v. California*, 453 U.S. 420, 443 (1981), *overruled on other grounds by United States v. Ross*, 466 U.S. 798 (1982) (Rehnquist, J., dissenting). Application of *Belton*’s expanded exception has caused confusion among the lower courts, and no argument for a nonexistent bright line rule can save its constitutionality.

V. UNDER *CHIMEL*, NO EXIGENT CIRCUMSTANCES IN THIS CASE REQUIRED THE WAIVER OF A WARRANT REQUIREMENT.

After either distinguishing or overruling *Belton*, this Court should look to the twin concerns of *Chimel* to determine the constitutionality of the search. Accordingly:

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.

Chimel 395 U.S. at 762-63 (1969). These same concerns permit a warrantless search of the area under the arrestee’s control. *Id.* This Court has repeatedly refused to forsake this test. In *Knowles v. Iowa*, 525 U.S. 113 (1998), this Court unanimously stated, “we are asked to extend that [*Belton*] ‘bright-line rule’ to a situation where the concern for officer safety is not present to

the same extent and the concern for destruction or loss of evidence is not present at all. We decline to do so.” *Id.* at 118–19. While the *Knowles* Court applied its exigency analysis to a search incident to a citation, it is worth noting that similar petty misdemeanors can give rise to custodial arrests such that the *Knowles* Court’s rationale remains instructive to this Court. Should this Court abandon the central concerns of *Chimel* and expand the search incident to arrest exception, the warrant requirement of the Fourth Amendment would be in danger of being read out of the Constitution. *See Coolidge* 403 U.S. at 480. Should this Court follow the path the District Court below and many other lower courts have travelled, “the ability to search a vehicle incident to the arrest of a recent occupant [will be treated] as a police entitlement rather than as an exception justified by the twin rationales of *Chimel v. California*.” *Thornton* 541 U.S. at 624 (O’Connor, J., concurring in part).

In this case, the danger to the agents was minimal, if not non-existent. The government has failed to show one example of an arrestee in Autry’s restrained state endangering an officer with a weapon from the vehicle waiting to be searched. There was no evidence to protect. All incriminating evidence—that respondent could have even destroyed in anticipation of the agents’ presence—was far removed from his control. Thus, the search was unconstitutional.

CONCLUSION

For the forgoing reasons, the decision below was correct, and this Court should affirm the lower court’s narrow interpretation of *New York v. Belton*. If this Court rejects the lower court’s view, then the Court should overrule *Belton*.

Respectfully Submitted,

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