SUPREME COURT OF THE UNITED STATES

No. 03–5165

MARCUS THORNTON, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[May 24, 2004]

JUSTICE SCALIA, with whom JUSTICE GINSBURG joins, concurring in the judgment.

In *Chimel* v. *California,* 395 U. S. 752, 762–763 (1969), we held that a search incident to arrest was justified only as a means to find weapons the arrestee might use or evidence he might conceal or destroy. We accordingly limited such searches to the area within the suspect's "'immediate control'"—*i.e.*, "the area into which an arrestee might reach in order to grab a weapon or evidentiary ite[m]." *Id.*, at 763. In *New York* v. *Belton,* 453 U. S. 454, 460 (1981), we 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.

When petitioner's car was searched in this case, he was neither in, nor anywhere near, the passenger compartment of his vehicle. Rather, he was handcuffed and secured in the back of the officer's squad car. The risk that he would nevertheless "grab a weapon or evidentiary ite[m]" from his car was remote in the extreme. The Court's effort to apply our current doctrine to this search stretches it beyond its breaking point, and for that reason I cannot join the Court's opinion.

I

I see three reasons why the search in this case might have been justified to protect officer safety or prevent concealment or destruction of evidence. None ultimately persuades me.

The first is that, despite being handcuffed and secured in the back of a squad car, petitioner might have escaped and retrieved a weapon or evidence from his vehicle—a theory that calls to mind Judge Goldberg's reference to the mythical arrestee "possessed of the skill of Houdini and the strength of Hercules." *United States* v. *Frick*, 490 F. 2d 666, 673 (CA5 1973) (opinion concurring in part and dissenting in part). The United States, endeavoring to ground this seemingly speculative fear in reality, points to a total of seven instances over the past 13 years in which state or federal officers were attacked with weapons by handcuffed or formerly handcuffed arrestees. Brief for United States 38–39, and n. 12. These instances do not, however, justify the search authority claimed. Three involved arrestees who retrieved weapons concealed *on their own person*. See *United States* v. *Sanders*, 994 F. 2d 200, 210, n. 60 (CA5 1993) (two instances); U. S. Dept. of Justice, Federal Bureau of Investigation, Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted 49 (2001). Three more involved arrestees who seized a weapon *from the arresting officer*. See *Sanders*, *supra*, at 210, n. 60 (two instances); U. S. Dept. of Justice, Federal Bureau of Investigation, Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted 49 (1998). Authority to search the arrestee's own person is beyond question; and of course no search could prevent seizure of the officer's gun. Only one of the seven instances involved a handcuffed arrestee who escaped from a squad car to retrieve a weapon from somewhere else: In *Plakas* v. *Drinski*, 19 F. 3d 1143, 1144–1146 (CA7 1994), the suspect jumped out of the squad car and ran through a forest to a house, where (still in handcuffs) he

struck an officer on the wrist with a fireplace poker before ultimately being shot dead.

Of course, the Government need not document specific instances in order to justify measures that avoid obvious risks. But the risk here is far from obvious, and in a context as frequently recurring as roadside arrests, the Government's inability to come up with even a single example of a handcuffed arrestee's retrieval of arms or evidence from his vehicle undermines its claims. The risk that a suspect handcuffed in the back of a squad car might escape and recover a weapon from his vehicle is surely no greater than the risk that a suspect handcuffed in his residence might escape and recover a weapon from the next room—a danger we held insufficient to justify a search in *Chimel*, *supra*, at 763.

The second defense of the search in this case is that, since the officer could have conducted the search at the time of arrest (when the suspect was still near the car), he should not be penalized for having taken the sensible precaution of securing the suspect in the squad car first. As one Court of Appeals put it: "'[I]t does not make sense to prescribe a constitutional test that is entirely at odds with safe and sensible police procedures.'" *United States* v. *Mitchell*, 82 F. 3d 146, 152 (CA7 1996) (quoting *United States* v. *Karlin*, 852 F. 2d 968, 971 (CA7 1988)); see also *United States* v. *Wesley*, 293 F. 3d 541, 548–549 (CADC 2002). The weakness of this argument is that it assumes that, one way or another, the search must take place. But conducting 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. Indeed, if an officer leaves a suspect unrestrained nearby just to manufacture authority to search, one could argue

that the search is unreasonable *precisely because* the dangerous conditions justifying it existed only by virtue of the officer's failure to follow sensible procedures.

The third defense of the search is that, even though the arrestee posed no risk here, *Belton* searches in general are reasonable, and the benefits of a bright-line rule justify upholding that small minority of searches that, on their particular facts, are not reasonable. The validity of this argument rests on the accuracy of *Belton*'s claim that the passenger compartment is "in fact generally, even if not inevitably," within the suspect's immediate control. 453 U. S., at 460. By the United States' own admission, however, "[t]he practice of restraining an arrestee on the scene before searching a car that he just occupied is so prevalent that holding that *Belton* does not apply in that setting would . . . 'largely render *Belton* a dead letter.'" Brief for United States 36–37 (quoting *Wesley*, *supra*, at 548). Reported cases involving this precise factual scenario—a motorist handcuffed and secured in the back of a squad car when the search takes place—are legion. See, *e.g.*, *United States* v. *Doward*, 41 F. 3d 789, 791 (CA1 1994); *United States* v. *White*, 871 F. 2d 41, 44 (CA6 1989); *Mitchell*, *supra*, at 152; *United States* v. *Snook*, 88 F. 3d 605, 606 (CA8 1996); *United States* v. *McLaughlin*, 170 F. 3d 889, 890 (CA9 1999); *United States* v. *Humphrey*, 208 F. 3d 1190, 1202 (CA10 2000); *Wesley*, *supra*, at 544; see also 3 W. LaFave, Search and Seizure §7.1(c), pp. 448–449, n. 79 (3d ed. 1996 and Supp. 2004) (citing cases). Some courts uphold such searches even when the squad car carrying the handcuffed arrestee has already left the scene. See, *e.g.*, *McLaughlin*, *supra*, at 890–891 (upholding search because only five minutes had elapsed since squad car left).

The popularity of the practice is not hard to fathom. If *Belton entitles* an officer to search a vehicle upon arresting the driver despite having taken measures that eliminate any danger, what rational officer would not take those

measures? Cf. Moskovitz, A Rule in Search of a Reason: An Empirical Reexamination of *Chimel* and *Belton*, 2002 Wis. L. Rev. 657, 665–666 (citing police training materials). If it was ever true that the passenger compartment is "in fact generally, even if not inevitably," within the arrestee's immediate control at the time of the search, 453 U. S., at 460, it certainly is not true today. As one judge has put it: "[I]n our search for clarity, we have now abandoned our constitutional moorings and floated to a place where the law 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." *McLaughlin*, *supra*, at 894 (Trott, J., concurring). I agree entirely with that assessment.

II

If *Belton* searches are justifiable, it is not because the arrestee might grab a weapon or evidentiary item from his car, but simply because the car might contain evidence relevant to the crime for which he was arrested. This more general sort of evidence-gathering search is not without antecedent. For example, in *United States* v. *Rabinowitz,* 339 U. S. 56 (1950), we upheld a search of the suspect's place of business after he was arrested there. We did not restrict the officers' search authority to "the area into which [the] arrestee might reach in order to grab a weapon or evidentiary ite[m]," *Chimel*, 395 U. S., at 763, and we did not justify the search as a means to prevent concealment or destruction of evidence.[1] Rather, we relied on a more general interest in gathering evidence relevant to the crime for which the suspect had been arrested. See

[1] We did characterize the entire office as under the defendant's "immediate control," 339 U. S., at 61, but we used the term in a broader sense than the one it acquired in *Chimel*. Compare 339 U. S., at 61, with 395 U. S., at 763.

339 U. S., at 60–64; see also *Harris* v. *United States,* 331 U. S. 145, 151–152 (1947); *Marron* v. *United States,* 275 U. S. 192, 199 (1927); *Agnello* v. *United States,* 269 U. S. 20, 30 (1925); cf. *Weeks* v. *United States,* 232 U. S. 383, 392 (1914).

Numerous earlier authorities support this approach, referring to the general interest in gathering evidence related to the crime of arrest with no mention of the more specific interest in preventing its concealment or destruction. See *United States* v. *Wilson*, 163 F. 338, 340, 343 (CC SDNY 1908); *Smith* v. *Jerome*, 47 Misc. 22, 23–24, 93 N. Y. S. 202, 202–203 (1905); *Thornton* v. *State*, 117 Wis. 338, 346–347, 93 N. W. 1107, 1110 (1903); *Ex parte Hurn*, 92 Ala. 102, 112, 9 So. 515, 519–520 (1891); *Thatcher* v. *Weeks*, 79 Me. 547, 548–549, 11 A. 599, 599–600 (1887); 1 F. Wharton, Criminal Procedure §97, pp. 136–137 (J. Kerr 10th ed. 1918); 1 J. Bishop, Criminal Procedure §211, p. 127 (2d ed. 1872); cf. *Spalding* v. *Preston*, 21 Vt. 9, 15 (1848) (seizure authority); *Queen* v. *Frost*, 9 Car. & P. 129, 131–134 (1839) (same); *King* v. *Kinsey*, 7 Car. & P. 447 (1836) (same); *King* v. *O'Donnell*, 7 Car. & P. 138 (1835) (same); *King* v. *Barnett*, 3 Car. & P. 600, 601 (1829) (same). Bishop's 1872 articulation is typical:

> "The officer who arrests a man on a criminal charge should consider the nature of the charge; and, if he finds about the prisoner's person, or otherwise in his possession, either goods or moneys which there is reason to believe are connected with the supposed crime as its fruits, or as the instruments with which it was committed, or as directly furnishing evidence relating to the transaction, he may take the same, and hold them to be disposed of as the court may direct." Bishop, *supra*, §211, at 127.

Only in the years leading up to *Chimel* did we start consistently referring to the narrower interest in frustrating

concealment or destruction of evidence. See *Sibron* v. *New York,* 392 U. S. 40, 67 (1968); *Preston* v. *United States,* 376 U. S. 364, 367 (1964).

There is nothing irrational about broader police authority to search for evidence when and where the perpetrator of a crime is lawfully arrested. The fact of prior lawful arrest distinguishes the arrestee from society at large, and distinguishes a search for evidence of *his* crime from general rummaging. Moreover, it is not illogical to assume that evidence of a crime is most likely to be found where the suspect was apprehended.

Nevertheless, *Chimel*'s narrower focus on concealment or destruction of evidence also has historical support. See *Holker* v. *Hennessey*, 141 Mo. 527, 539–540, 42 S. W. 1090, 1093 (1897); *Dillon* v. *O'Brien*, 16 Cox C. C. 245, 250 (Ex. Div. Ire. 1887); *Reifsnyder* v. *Lee*, 44 Iowa 101, 103 (1876); S. Welch, Essay on the Office of Constable 17 (1758).[2] And some of the authorities supporting the broader rule address only searches of the arrestee's *person*, as to which *Chimel*'s limitation might fairly be implicit. Moreover, carried to its logical end, the broader rule is hard to reconcile with the influential case of *Entick* v. *Carrington*, 19 How. St. Tr. 1029, 1031, 1063–1074 (C. P. 1765) (disapproving search of plaintiff's private papers under general warrant, despite arrest). But cf. *Dillon*, *supra*, at 250–251 (distinguishing *Entick*); *Warden, Md. Penitentiary* v. *Hayden,* 387 U. S. 294, 303–304 (1967).

In short, both *Rabinowitz* and *Chimel* are plausible accounts of what the Constitution requires, and neither is so persuasive as to justify departing from settled law. But

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[2] *Chimel*'s officer-safety rationale has its own pedigree. See *Thornton* v. *State*, 117 Wis. 338, 346–347, 93 N. W. 1107, 1110 (1903); *Ex parte Hurn*, 92 Ala. 102, 112, 9 So. 515, 519–520 (1891); *Closson* v. *Morrison*, 47 N. H. 482, 484–485 (1867); *Leigh* v. *Cole*, 6 Cox C. C. 329, 332 (Oxford Cir. 1853); Welch, Essay on the Office of Constable, at 17.

if we are going to continue to allow *Belton* searches on *stare decisis* grounds, we should at least be honest about why we are doing so. *Belton* cannot reasonably be explained as a mere application of *Chimel*. Rather, it is a return to the broader sort of search incident to arrest that we allowed before *Chimel*—limited, of course, to searches of motor vehicles, a category of "effects" which give rise to a reduced expectation of privacy, see *Wyoming* v. *Houghton,* 526 U. S. 295, 303 (1999), and heightened law enforcement needs, see *id.*, at 304; *Rabinowitz*, 339 U. S., at 73 (Frankfurter, J., dissenting).

Recasting *Belton* in these terms would have at least one important practical consequence. In *United States* v. *Robinson,* 414 U. S. 218, 235 (1973), we held that authority to search an arrestee's person does not depend on the actual presence of one of *Chimel*'s two rationales in the particular case; rather, the fact of arrest alone justifies the search. That holding stands in contrast to *Rabinowitz*, where we did not treat the fact of arrest alone as sufficient, but upheld the search only after noting that it was "not general or exploratory for whatever might be turned up" but reflected a reasonable belief that evidence would be found. 339 U. S., at 62–63; see also *Smith*, *supra*, at 24, 93 N. Y. S., at 203 ("This right and duty of search and seizure extend, however, only to articles which furnish evidence against the accused"); cf. *Barnett*, *supra*, at 601 (seizure authority limited to relevant evidence); Bishop, *supra*, §211, at 127 (officer should "consider the nature of the charge" before searching). The two different rules make sense: When officer safety or imminent evidence concealment or destruction is at issue, officers should not have to make fine judgments in the heat of the moment. But in the context of a general evidence-gathering search, the state interests that might justify any overbreadth are far less compelling. A motorist may be arrested for a wide variety of offenses; in many cases, there is no reasonable

basis to believe relevant evidence might be found in the car. See *Atwater* v. *Lago Vista,* 532 U. S. 318, 323–324 (2001); cf. *Knowles* v. *Iowa,* 525 U. S. 113, 118 (1998). I would therefore limit *Belton* searches to cases where it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.

In this case, as in *Belton*, petitioner was lawfully arrested for a drug offense. It was reasonable for Officer Nichols to believe that further contraband or similar evidence relevant to the crime for which he had been arrested might be found in the vehicle from which he had just alighted and which was still within his vicinity at the time of arrest. I would affirm the decision below on that ground.[3]

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[3] The Court asserts that my opinion goes beyond the scope of the question presented, citing this Court's Rule 14.1(a). *Ante*, at 8, n. 4. That Rule, however, does not constrain our authority to reach issues presented by the case, see *Vance* v. *Terrazas,* 444 U. S. 252, 259, n. 5 (1980); *Tennessee Student Assistance Corp.* v. *Hood*, 541 U. S. ___, ___ (2004) (slip op., at 1), and in any event does not apply when the issue is necessary to an intelligent resolution of the question presented, see *Ohio* v. *Robinette,* 519 U. S. 33, 38 (1996).