

SEARCHING A VEHICLE WITHOUT A WARRANT

Search Incident to Arrest

Bryan R. Lemons
Senior Instructor

In this article of the *Quarterly Review*, I will discuss searching a vehicle without a warrant during a search incident to a valid arrest. Again, in discussing this exception to the Fourth Amendment's warrant requirement, the background, requirements, and scope of the search will be addressed. With regard to the scope of the search, the articles will focus on four specific areas: The passenger compartment of the vehicle; the trunk of the vehicle; unlocked containers located in the vehicle; and locked containers located in the vehicle.

SEARCHES INCIDENT TO ARREST

BACKGROUND

It has long been recognized that a search conducted incident to a lawful custodial arrest "is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment."¹ In *United States v. Robinson*,² the Supreme Court noted "two historical rationales for the search incident to arrest exception: (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."³ The permissible scope of a search incident to arrest was outlined by the Supreme

Court in the 1969 case of *Chimel v. California*,⁴ where they held:

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 evidence 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. There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control' – construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.⁵

¹ *United States v. Robinson*, 414 U.S. 218, 235 (1973)

² *Id.*

³ *Id.*

⁴ 395 U.S. 752 (1969)

⁵ *Id.* at 762-763

Unfortunately, “[w]hile the *Chimel* case established that a search incident to arrest may not stray beyond the area *within the immediate control of the arrestee*,”⁶ defining exactly what was meant by that phrase was problematic, especially when dealing with vehicles. Twelve years after *Chimel* was decided, the Supreme Court addressed “the proper scope of a search of the interior of an automobile incident to a lawful custodial arrest of its occupants” in *New York v. Belton*.⁷

REQUIREMENTS

A search incident to arrest may only be conducted when two (2) requirements have been met. First, there must have been a lawful custodial arrest. At a minimum, this requires that (1) probable cause exist to believe that the arrestee has committed a crime and (2) an arrest is actually made. A search incident to arrest may not be conducted in a situation where an actual arrest does not take place.⁸ For example, a search incident to arrest may not be conducted in a *Terry*-type situation, in that “an arrest is a wholly different kind of intrusion upon individual freedom from a limited search for weapons, and the interests each is designed to serve are likewise quite different.”⁹ Illustrative on this point is *Knowles v. Iowa*,¹⁰ where the Supreme Court struck down an Iowa statute that permitted an officer to conduct a “search incident to citation” in those cases where a

law enforcement officer had probable cause to arrest a suspect for a traffic violation, but chose, instead, simply to issue a traffic citation. Citing *Robinson, supra*, the Supreme Court noted that the Iowa statute did not implicate the two historical justifications permitting a search incident to arrest. First, a custodial arrest “involves danger to an officer because of the extended exposure which follows the taking of a suspect into custody and transporting him to the police station.”¹¹ The same degree of danger is not present when a law enforcement officer is issuing a traffic citation. Second, the likelihood of evidence being destroyed in the type of situation addressed by the Iowa law was minimal.

The second requirement for a lawful search incident to arrest is that the search must be “substantially contemporaneous” with the arrest.¹² Unfortunately, what exactly is meant by this phrase is open to interpretation. In *United States v. Turner*,¹³ the court stated that a search incident to arrest must be conducted “at about the same time as the arrest.”¹⁴ While very general, this comment reiterates the Supreme Court’s mandate that, when a search is too remote in time or place from the arrest, the search cannot be justified as incident to the arrest.¹⁵ Whether a search was “substantially contemporaneous,” is an issue that must be reviewed in light of the

⁶ *New York v. Belton*, 453 U.S. 454, 460 (1981)(emphasis added)

⁷ *Id.*

⁸ See *Robinson*, 414 U.S. at 235; *McCardle v. Haddad*, 131 F.3d 43 (2nd Cir. 1997)(Search incident to arrest not valid where 10 minute detention in backseat of patrol vehicle did not amount to an arrest)

⁹ *Robinson*, 414 U.S. at 228

¹⁰ 525 U.S. 113 (1998)

¹¹ *Id.* at 117

¹² *Belton*, 453 U.S. at 460. See also *Stoner v. California*, 376 U.S. 483, 486 (1964) and *Preston v. United States*, 376 U.S. 364, 367-368 (1964)

¹³ 926 F.2d 883 (9th Cir.), *cert. denied*, 502 U.S. 830 (1991)

¹⁴ *Id.* at 887

¹⁵ *Preston*, 376 U.S. at 367 (“Once an accused is under arrest and in custody, then a search made at another place, without a warrant, is simply not incident to the arrest”)

Fourth Amendment's general reasonableness requirement, taking into consideration all of the circumstances surrounding the search. Thus, while a search conducted 15 minutes after an arrest might be valid in one case,¹⁶ a search 30 to 45 minutes after the arrest might be invalid in another.¹⁷ Among the factors to be considered in determining whether a search was "contemporaneous" with the arrest are where the search was conducted; when the search was conducted in relation to the arrest; and whether the defendant was present at the scene of the arrest during the search. For example, in *United States v. Willis*,¹⁸ the search of a vehicle was upheld because, among other things, the search was conducted before the defendant was transported to the police station. Alternatively, in *United States v. Lugo*,¹⁹ the search of the defendant's vehicle was found invalid where the defendant had been removed from the scene of the arrest. In sum, if it can be safely accomplished, the search incident to arrest should be conducted at the scene of the arrest, as soon as possible after the arrest, and before the defendant is removed from the area.

SCOPE

Chimel established that a search incident to arrest may be conducted on the arrestee's person and those areas "within

the immediate control of the arrestee" at the time of the arrest. In *Belton*, the Supreme Court established the following bright-line rule for vehicles: "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."²⁰ The Supreme Court additionally held that "the police may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach."²¹ A "container" was defined in *Belton* as "any object capable of holding another object. It thus includes closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing, and the like."²² While this definition did not expressly address "locked" containers, several subsequent federal cases can be interpreted as including locked containers within the scope of a lawful search incident to arrest.²³ Further, two of the Justices who disagreed with the majority's decision in

²⁰ *Belton*, 453 U.S. at 460

²¹ *Id.* (citation omitted)(footnote omitted)

²² *Id.* at 453 U.S. at 461 n4

²³ See *Knowles*, 525 U.S. at 118 (Law enforcement officers may "even conduct a full search of the passenger compartment, including any containers therein, pursuant to a custodial arrest")(emphasis added); *United States v. Tavalacci*, 895 F.2d 1423 (D.C. Cir. 1990)(locked bag); *United States v. Gonzalez*, 71 F.3d 819 (11th Cir. 1996)(*Belton* rule allowed searches of glove boxes, locked or unlocked); *United States v. Valiant*, 873 F.2d 205 (8th Cir. 1989)(locked briefcase was closed container within the vehicle that could be lawfully searched incident to arrest); and *United States v. Woody*, 55 F.3d 1257 (7th Cir. 1995)(search of locked glove box reasonable during search incident to arrest)

¹⁶ *Curd v. City of Judsonia*, 141 F.3d 839 (8th Cir.), cert. denied, 525 U.S. 888 (1998)(Warrantless search of purse at police station found to be valid as incident to arrest even though search occurred 15 minutes after the defendant's arrest at home)

¹⁷ *United States v. Vasey*, 834 F.2d 782 (9th Cir. 1987)(Warrantless search held not incident to arrest and invalid when the search took place 30 to 45 minutes after the defendant had been arrested, handcuffed, and placed in patrol vehicle)

¹⁸ 37 F.3d 313 (7th Cir. 1994)

¹⁹ 978 F.2d 631 (10th Cir. 1992)

Belton seemed to concede that locked containers fall within the parameters outlined in that case.²⁴ The trunk of a vehicle, however, is not within the immediate control of an arrestee and cannot be searched during a search incident to arrest.²⁵

²⁴ *Belton*, 453 U.S. at 469 (Brennan, J., dissenting)(Noting that result in *Belton* would have been the same even if “search had extended to locked luggage or other inaccessible containers located in the back seat of the car”); *Id.* at 453 U.S. 472 (White, J., dissenting)(*Belton* rule allows “interior of the car and any container found therein, whether locked or not” to be searched incident to lawful arrest)

²⁵ *Id.* at 461 n.4 (“Our holding encompasses only the interior of the passenger compartment of an automobile and does not encompass the trunk”). See also *United States v. Thompson*, 906 F.2d 1292 (8th Cir.), cert. denied, 498 U.S. 989 (1990); *United States v. Hernandez*, 901 F.2d 1217 (5th Cir. 1990); *United States v. Schechter*, 717 F.2d 864 (3rd Cir. 1983); *United States v. Freire*, 710 F.2d 1515 (11th Cir. 1983), cert. denied, 465 U.S. 1023 (1984); and *United States v. Wright*, 932 F.2d 868 (10th Cir. 1991)