

MOTORISTS ARE PEOPLE TOO: RECALCULATING THE VEHICULAR SEARCH INCIDENT TO ARREST EXCEPTION BY PROHIBITING SEARCHES INCIDENT TO ARRESTS FOR NONEVIDENTIARY OFFENSES

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INTRODUCTION

[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.¹

On January 4, 2003, Dale Osife stepped out of his pickup truck in the parking lot of a grocery store in Phoenix, Arizona.² He urinated on the ground next to his truck and walked into the store. A woman who observed the incident called the police, and two officers came to the scene in a patrol car.³ The officers noticed a pool of fluid next to the driver's side door of Mr. Osife's truck. Osife came out of the store, walked up to his pickup truck, and opened the driver's side door. One of the officers watched him take what looked like a plastic bag out of the pocket of his pants and place it on the driver's seat inside the truck.⁴ The officer approached him and told him someone had reported him for public urination. Osife denied the charge.⁵ A few minutes later, the woman who had telephoned the police returned and identified Osife as the man whom she had seen urinating. At that time Osife was still standing next to the open door of his

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¹ *Thornton v. United States*, 541 U.S. 615, 628 (2004) (Scalia, J., concurring) (citing *United States v. McLaughlin*, 170 F.3d 889, 894 (9th Cir. 1999) (Trott, J., concurring)).

² *United States v. Osife*, 398 F.3d 1143, 1144 (9th Cir. 2005). The following facts are taken largely verbatim from the Ninth Circuit's opinion.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

truck. The police officer placed Osife under arrest for indecent exposure, handcuffed him, and secured him in the back of the patrol car.⁶

Osife remained handcuffed and secured in the patrol car while the officer searched the passenger compartment of Osife's truck. Underneath the plastic bag on the driver's seat was a black Beretta .40 caliber pistol. The officer ran a records check on the gun and discovered that it had been stolen. The officer read Osife his Miranda rights and tried to question him, but Osife refused to talk.⁷

Based on the .40 caliber pistol retrieved from Osife's vehicle, the federal government indicted Osife for being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1).⁸ Osife pled not guilty and moved to suppress the evidence gathered during the warrantless search of his pickup truck. The district court denied Osife's motion to suppress, holding that the gun was discovered during a permissible search incident to a lawful arrest.⁹ Osife proceeded to trial, where a jury found him guilty. On March 8, 2004, the district court sentenced Osife to 57 months in prison and three years of supervised release.¹⁰ Mr. Osife's ill-fated decision to use the grocery store parking lot as his restroom earned him a sentence of nearly five years in prison.

Absurd as Dale Osife's story may seem,¹¹ it is nonetheless an important cautionary tale of constitutional jurisprudence gone awry. The Fourth Amendment to the United States Constitution states, "The right of the people to be secure . . . against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause . . .

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 1144-45.

⁹ *Id.* at 1145.

¹⁰ *Id.*

¹¹ As Justice Frankfurter once famously observed, "the safeguards of liberty have frequently been forged in controversies involving not very nice people." *United States v. Rabinowitz*, 339 U.S. 56, 69 (1950) (Frankfurter, J., dissenting). Dale Osife may be one of those people.

particularly describing the place to be searched, and the persons or things to be seized.”¹² The Amendment, under the most simplistic of explanations, is typically interpreted as requiring a warrant or probable cause to believe that evidence of a specific crime will be found before permitting government officials to search person or property.¹³ There are of course many exceptions to the warrant requirement.¹⁴ Searches incident to arrest have existed as a recognized exception to the Fourth Amendment warrant requirement for more than nine decades.¹⁵ Today, however, the “exception” threatens to swallow the rule.¹⁶

In 1969, the Supreme Court in *Chimel v. California* attempted to articulate the modern scope of the search incident to arrest exception by stating that searches incident to arrest must be limited to two specific contexts: when necessary either to 1) protect officer safety, or 2) preserve evidence that an arrestee could otherwise access and destroy.¹⁷ The Supreme Court has since strayed from those strict limitations—the Court’s most recent search incident to arrest decision, which came in the 2004 case *Thornton v. United States*, upheld search of a vehicle incident to an

¹² U.S. Const. amend. IV.

¹³ See, e.g., *Illinois v. McArthur*, 521 U.S. 326, 330 (2001) (stating that “in the ordinary case, seizures of personal property are unreasonable within the meaning of the Fourth Amendment . . . unless . . . accomplished pursuant to a judicial warrant, issued by a neutral magistrate after finding probable cause”); see also *United States v. Jeffers*, 342 U.S. 48, 51 (1951); *Weeks v. United States*, 232 U.S. 383, 391 (1914).

¹⁴ To name just a few: *Maryland v. Buie*, 494 U.S. 325 (1989) (protective sweep); *United States v. Santana*, 427 U.S. 38 (1976) (exigent circumstances); *United States v. Carroll*, 267 U.S. 132 (1924) (automobile exception); *Schneekloth v. Bustamonte*, 412 U.S. 218 (1973) (consent); *Minnesota v. Dickerson*, 508 U.S. 366 (1993) (plain view); *Terry v. Ohio*, 392 U.S. 1 (1968) (stop and frisk); *Florida v. Wells*, 495 U.S. 1 (1990) (inventory search); *Nix v. Williams*, 467 U.S. 431 (1984) (inevitable discovery). Exceptions to the Fourth Amendment warrant requirement are so multitudinous that one esteemed scholar has referred to them as “a sinking ocean liner—rudderless and badly off course.” Akhil Amar, *Fourth Amendment First Principles*, 107 HARV. L. REV. 757, 759 (1994).

¹⁵ See James J. Tomkovicz, *Divining and Designing the Future of the Search Incident to Arrest Doctrine: Avoiding Instability, Irrationality, and Infidelity*, 2007 U. ILL. L. REV. 1417 (tracing the origin of the search incident to arrest exception back to *Weeks v. United States*, 232 U.S. 383 (1914) and *Carroll v. United States*, 267 U.S. 132 (1925)).

¹⁶ See *Thornton v. United States*, 541 U.S. 615, 624 (2004) (O’Connor, J., concurring) (noting 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”); see also, e.g., George Dery & Michael J. Hernandez, *Turning a Government Search Into a Permanent Power: Thornton v. United States and the “Progressive Distortion” of Search Incident to Arrest*, 14 WM. & MARY BILL OF RIGHTS 677, 696 (2005); Kelly A. Deters, Note, *The “Evaporation Point”*: *State v. Sykes and the Erosion of the Fourth Amendment Through the Search-Incident-to-Arrest Exception*, 92 U. IOWA L. REV. 1901, 1926 (2007) (agreeing that the search incident to arrest exception has drifted wildly from its original moorings).

¹⁷ 395 U.S. 752, 763 (1969).

arrest for drug possession, even where the arrestee was several feet away from his vehicle when arrested, and where he had already been secured in the back of a police car before the officers searched his vehicle.¹⁸ The arrestee's ability to access his vehicle for weapons or drugs in *Thornton* was doubtful at best, and many commentators and lower courts have read the Court's decision as discarding the *Chimel* limitations in favor of a *per se* rule permitting officers to search a vehicle incident to every arrest of a vehicle occupant or recent occupant.¹⁹

In early 2008, however, the Supreme Court indicated its willingness to revisit the scope of vehicular searches incident to arrest when it granted certiorari in *Arizona v. Gant* on the question of whether "the Fourth Amendment require[s] 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."²⁰

The thesis of this paper is that the United States Supreme Court must use *Gant* as an opportunity to clarify the scope of the vehicular search incident to arrest exception by explicitly prohibiting searches unjustified by either rationales of officer safety or evidence preservation,²¹ and additionally in which an officer could not reasonably expect that evidence related to the crime of arrest would be found in search of the vehicle. To the extent that the *Thornton* decision allowing a search only (at best) weakly justified by the rationales of officer safety or evidence

¹⁸ 541 U.S. 615, 618 (2004).

¹⁹ *Id.* at 622; see also, e.g., Edwin J. Butterfoss, *Bright Line Breaking Point: Embracing Justice Scalia's Call for the Supreme Court To Abandon an Unreasonable Approach to Fourth Amendment Search and Seizure Law*, 82 TUL. L. REV. 77, 97 (2007); James J. Tomkovicz, *Divining and Designing the Future of the Search Incident to Arrest Doctrine: Avoiding Instability, Irrationality, and Infidelity*, 2007 U. ILL. L. REV. 1417; George Dery & Michael J. Hernandez, *Turning a Government Search Into a Permanent Power: Thornton v. United States and the "Progressive Distortion" of Search Incident to Arrest*, 14 WM. & MARY BILL OF RIGHTS 677, 696 (2005); Dane C. Ball, *Thornton v. United States: Blurring Belton's Bright Line Rule Spells Disaster for Lower Courts and the Fourth Amendment*, 35 SW. U. L. REV. 1 (2005); David Rudstein, *Belton Redux: Reevaluating Belton's Per Se Rule Governing the Search of an Automobile Incident to Arrest*, 40 WAKE FOREST L. REV. 1287 (2005).

²⁰ *Arizona v. Gant*, 2008 U.S. LEXIS 2022 (Feb. 25, 2008).

²¹ Otherwise known as the *Chimel* justifications. 395 U.S. at 763.

preservation is problematic, the Supreme Court may simply use *Gant* to overturn that decision and hold that officers may search a vehicle only where they can present a demonstrable need to protect themselves or preserve evidence an arrestee might otherwise destroy. Many scholars have urged the Court to adopt this holding.²²

This paper, however, takes the position (unique among the scholarly community) that *Thornton* need not be overturned in order for the Court to create a new bright-line rule protecting the interests of vehicle occupants in the unique factual context of arrests for nonevidentiary offenses.²³ Although *Gant* and *Thornton* both involved search of a vehicle incident to a lawful arrest, the (potentially critical) distinction in *Gant* is that it involved a search incident to an arrest for driving with a suspended license.²⁴ Not only were the rationales of officer safety and evidence preservation even more obviously absent in *Gant*, but the search of Mr. Gant's vehicle (unlike the search for drugs incident to the arrest for drug possession in *Thornton*) had no possibility of uncovering evidence related to the crime of arrest.²⁵ Even if the Court decides that officers in the context of, for example, felony arrests for drugs or weapons possession need not make any affirmative showing of safety or evidence preservation concerns in order to search the vehicle, a rule weighing so heavily in favor of law enforcement officers is inappropriate in the distinct context of arrests for crimes in which it is unreasonable to believe that evidence related

²² See, e.g., Edwin J. Butterfoss, *Bright Line Breaking Point: Embracing Justice Scalia's Call for the Supreme Court To Abandon an Unreasonable Approach to Fourth Amendment Search and Seizure Law*, 82 TUL. L. REV. 77, 97 (2007); James J. Tomkovicz, *Divining and Designing the Future of the Search Incident to Arrest Doctrine: Avoiding Instability, Irrationality, and Infidelity*, 2007 U. ILL. L. REV. 1417; George Dery & Michael J. Hernandez, *Turning a Government Search Into a Permanent Power: Thornton v. United States and the "Progressive Distortion" of Search Incident to Arrest*, 14 WM. & MARY BILL OF RIGHTS 677, 696 (2005); Dane C. Ball, *Thornton v. United States: Blurring Belton's Bright Line Rule Spells Disaster for Lower Courts and the Fourth Amendment*, 35 SW. U. L. REV. 1 (2005); David Rudstein, *Belton Redux: Reevaluating Belton's Per Se Rule Governing the Search of an Automobile Incident to Arrest*, 40 WAKE FOREST L. REV. 1287 (2005).

²³ The phrase "nonevidentiary offense" is simply shorthand for an offense for which the arresting officer could not reasonably believe that evidence related to the crime of arrest will be found in a search. Tomkovicz, 2007 U. ILL. L. REV. at 1456. A few examples of common nonevidentiary offenses include seat belt violations, speeding, or cell phone usage violations.

²⁴ *State v. Gant*, 162 P.3d 640, 645 (Ariz. 2007).

²⁵ *Id.* at 643.

to the crime of arrest will be found in the vehicle. Dale Osife’s case, where the Ninth Circuit conceded that evidence of Mr. Osife’s crime of public urination was not likely to be found in his vehicle, is one example of such a search.²⁶ Arrests for minor traffic violations are another common situation in which a vehicular search incident to arrest cannot uncover evidence related to the crime of arrest.²⁷

Such arrests for nonevidentiary offenses demand explicit protection from the Court—not only is such an arrest less likely to involve any threat to officer safety (and, by definition, cannot involve any threat of evidence destruction); such an arrest also provides no rational basis for believing that properly seizable evidence might be found in search of the vehicle.²⁸ Arrests alone do not authorize the government to rummage through arrestees’ unrelated personal belongings,²⁹ and even in the vehicular search incident to arrest context, the Supreme Court has never authorized such generalized rummaging.³⁰ Consequently, the balance of interests which the Court engages in when assessing the reasonableness of a search or seizure cannot favor the government.³¹ Where officers are merely engaging in general exploratory searches for evidence unrelated to the crime of arrest, the Court must declare such searches presumptively unreasonable³² and violative of the Fourth Amendment.³³ If the Court refuses to prohibit such

²⁶ *Osife*, 398 F.3d at 1147-48.

²⁷ *See, e.g., Gant*, 162 P.3d at 643.

²⁸ *Id.*

²⁹ *See, e.g., Maryland v. Garrison*, 480 U.S. 79, 84 (1987) (reiterating that the Fourth Amendment was intended to prohibit generalized exploratory searches).

³⁰ *See Thornton*, 541 U.S. at 621-23 (articulating various possible reasons for extending the *Chimel* rationales to permit a vehicular search incident to arrest where the vehicle occupant has already been secured in custody in the back of a police car, and no real threat to safety or possibility of evidence destruction exists). As I will explain in part II of this paper, none of the plausible interpretations of the *Thornton* opinion can justify a search for evidence unrelated to the crime of arrest.

³¹ Tomkovicz, 2007 U. ILL. L. REV. at 1456.

³² The author uses the phrase “presumptively unreasonable” as an acknowledgement that the government may overcome the presumption of unreasonableness if it introduces specific facts to show that, e.g., officer safety was indeed threatened in a particular situation.

³³ Allowing exploratory searches would fly in the face of this Court’s longstanding assertion that “searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under

exploratory searches, it risks exhibiting a cavalier attitude toward intrusive searches that would disintegrate the crucial Fourth Amendment protections upon which the United States was founded.³⁴

In part I of this paper I will analyze the pre-*Gant* trajectory of the modern-day search incident to arrest exception as carved out by the United States Supreme Court in *Chimel v. California*,³⁵ its initial application of the search incident to arrest exception to vehicular searches in the 1981 case *Belton v. New York*,³⁶ and finally, its most recent vehicular search incident to arrest decision in the 2004 case *Thornton v. United States*.³⁷ After tracing the Supreme Court's search incident to arrest jurisprudence, I will discuss how lower courts since *Thornton* have applied the Court's emphasis on bright-line rules problematically in the vehicular search context, to conclude that *Thornton* sanctions even those vehicular searches incident to arrest that are unjustified by the need to protect officers or preserve evidence, and that cannot reasonably be expected to uncover evidence related to the crime of arrest.³⁸ In essence, these searches are fishing expeditions by police officers for evidence of unrelated crimes.

I will then explain in part II why the Court's holdings in *Belton* and *Thornton* should not be read to permit warrantless searches incident to arrest for evidence unrelated to the crime of arrest. Because the facts of *Thornton* (the defendant was arrested fifteen feet from his car,

the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.” *California v. Acevedo*, 500 U.S. 565, 580 (1991).

³⁴ See David Rudstein, *Belton Redux: Reevaluating Belton's Per Se Rule Governing the Search of an Automobile Incident to Arrest*, 40 WAKE FOREST L. REV. 1287, 1309-10 (2005) (reasoning that, even in light of the serious intrusion upon individual liberty that an arrestee will almost necessarily suffer, the degree of intrusion upon privacy interests that search of an automobile and containers therein creates is still not minor. A person placed under custodial arrest will necessarily endure an intrusion on personal liberty. But the search of the passenger compartment of an automobile and any containers therein, such as a purse, briefcase, or locked suitcase, is distinct from and additional to any interference with the arrestee's liberty).

³⁵ 395 U.S. 752.

³⁶ 453 U.S. 454.

³⁷ 541 U.S. 615.

³⁸ See *Osife*, 398 F.3d at 1147-48; *United States v. Hrasky*, 453 F.3d 1099, 1100, 1103 (8th Cir.2006); *State v. Eckel*, 185 N.J. 523 (N.J. 2006); *State v. Scott*, 200 S.W.3d 41, 43-44 (Mo. Ct. App. 2006); *Rector v. Commonwealth*, 2007 VA App. Lexis 58, at *9-10 (Va. Ct. App. 2007).

searched, and fully secured in police custody before the officers searched his vehicle)³⁹ largely belie any effort to insist that the search incident to arrest in that case was justified by the *Chimel* rationales of officer safety and evidence preservation,⁴⁰ commentators have expended a great deal of energy attempting to decipher the real reasoning underlying the Court’s willingness to permit the search in *Thornton*.⁴¹ I will present the four most plausible rationales for the Court’s justification of the warrantless search in *Thornton*: the Court 1) intended to subtly resurrect a previously recognized (and emphatically overturned) evidence-gathering rationale;⁴² 2) pragmatically recognized that law enforcement officials count evidence gathering as one of their most important tasks, and that creating separate rules for searches of vehicle occupants and recent occupants would simply endanger officers who are attempting to gather evidence;⁴³ 3) was obsessed with bright-line rules;⁴⁴ and 4) genuinely believed that officer safety is a concern in every arrest, even after the arrestee has been secured in custody.⁴⁵ I will then explain why none of these four possible rationales for the *Thornton* decision can justify exploratory searches for evidence unrelated to the crime of arrest.

After explaining why the decision in *Thornton*—under any of the four plausible readings—should not be read as sanctioning warrantless searches for evidence unrelated to the crime of arrest, I will close in part III by advocating that the Supreme Court take *Gant* as an

³⁹ *Thornton*, 541 U.S. at 618.

⁴⁰ 395 U.S. at 762.

⁴¹ See, e.g., Edwin J. Butterfoss, *Bright Line Breaking Point: Embracing Justice Scalia’s Call for the Supreme Court To Abandon an Unreasonable Approach to Fourth Amendment Search and Seizure Law*, 82 TUL. L. REV. 77, 97 (2007); James J. Tomkovicz, *Divining and Designing the Future of the Search Incident to Arrest Doctrine: Avoiding Instability, Irrationality, and Infidelity*, 2007 U. ILL. L. REV. 1417; George Dery & Michael J. Hernandez, *Turning a Government Search Into a Permanent Power: Thornton v. United States and the “Progressive Distortion” of Search Incident to Arrest*, 14 WM. & MARY BILL OF RIGHTS 677, 696 (2005); Dane C. Ball, *Thornton v. United States: Blurring Belton’s Bright Line Rule Spells Disaster for Lower Courts and the Fourth Amendment*, 35 SW. U. L. REV. 1 (2005); David Rudstein, *Belton Redux: Reevaluating Belton’s Per Se Rule Governing the Search of an Automobile Incident to Arrest*, 40 WAKE FOREST L. REV. 1287 (2005).

⁴² 541 U.S. at 629.

⁴³ *Id.* at 621-22.

⁴⁴ *Id.* at 622-23.

⁴⁵ *Id.* at 621.

occasion to prohibit exploratory searches subsequent to arrests for nonevidentiary offenses. Restricting warrantless searches incident to arrest to those where it is reasonable to believe that evidence related to the crime of arrest might be found would affirm the original limitations to the search incident to arrest exception set by the Court in *Chimel*,⁴⁶ while still respecting the Court's concern for providing police officers a safe environment and clear rules for decision-making.⁴⁷ Such a restriction on law enforcement officials' power to search vehicles incident to arrest is an important protection of Fourth Amendment rights because, particularly where the Court has in recent years affirmed law enforcement officials' authority to make custodial arrests of individuals suspected of even the most minor misdemeanors,⁴⁸ many arrestees could be subject to search of their vehicles even where it is clear to any reasonable officer that evidence related to the crime of arrest cannot be found in the vehicle. Search of the vehicle in such an instance is simply unreasonable.⁴⁹

⁴⁶ 395 U.S. at 762.

⁴⁷ *Belton*, 453 U.S. at 460; *Thornton*, 541 U.S. at 623.

⁴⁸ *E.g.*, *Atwater v. City of Lago Vista*, 532 U.S. 318, 323-24 (2001) (authorizing arrest of a driver whose only offense was failure to wear her seat belt); *Brendlin v. California*, 127 S. Ct. 2400, 2410 n. 7 (2007) (affirming the holding of *Atwater*); *Whren v. United States*, 517 U.S. 806, 813 (1996) (traffic stops justified by probable cause are not invalid simply because they are a pretext for an officer to seeking an excuse to investigate other suspicions).

⁴⁹ The "automobile exception" to the warrant requirement, which states that a law enforcement officer may engage in a warrantless search an automobile if he has probable cause to believe that evidence of a specific crime will be found in the vehicle, does not apply to the distinctly different situations this paper addresses—where it is in unreasonable for an officer to believe that evidence of the crime for which the vehicle occupant was just arrested will be found in the vehicle. *Maryland v. Dyson*, 527 U.S. 465, 466-67 (1999). Of course, if an officer has probable cause to believe that evidence of a specific crime will be found in the vehicle, then the automobile exception justifies the officer's search of the vehicle, and the search incident to arrest exception need not even come into play. *Id.*

In contrast, the "inventory search" exception to the warrant requirement may allow a search that this paper would otherwise condemn as unreasonable. The inventory search exception allows police officers, where an arrestee's car has been lawfully impounded and police procedures dictate precise guidelines as to the proper scope of the search, to search the entirety of a vehicle after it has been impounded. *Florida v. Wells*, 495 U.S. 1, 4 (1990). If evidence of illegal activity is found during the course of a lawful inventory search, police officials may impound such evidence and use it in prosecution of the vehicle owner or occupant. *Colorado v. Bertine*, 479 U.S. 367, 371 (1987). However, not all arrests of vehicle occupants or recent occupants result in the vehicle being lawfully impounded. This paper then applies to situations where a vehicle occupant or recent occupant is arrested, the officer conducts a search incident to arrest, and no other justification (such as the inventory search exception) permits the officer to search the vehicle.

I. FROM *CHIMEL* TO *THORNTON*: TRACING THE SEARCH INCIDENT TO ARREST EXCEPTION

In *Chimel v. California* in 1969, the United States Supreme Court attempted to “inject rationality and stability”⁵⁰ into a previously unstable search incident to arrest doctrine by defining the outer boundaries of the search incident to arrest exception.⁵¹ The Court held that warrantless searches incident to arrest are justified only in two circumstances: when necessary either to 1) protect officer safety, or 2) preserve evidence that a suspect could otherwise destroy.⁵² *Chimel* involved search of a suspect after the individual was arrested in his home.⁵³ The Court stated that the search incident to arrest exception allows a police officer to search, subsequent to arrest of an individual, the arrestee’s body and the area within the arrestee’s reach.⁵⁴ Both of these searches are justified by the dual rationales of protecting officers by allowing them to remove weapons the arrestee might be able to access, and preserving evidence by allowing officers to confiscate evidentiary items the arrestee might otherwise attempt to destroy.⁵⁵ Even as the Court carved out an exception to the warrant requirement, it emphasized that the scope of the search must be strictly limited to the circumstances which justified waiver of the warrant requirement.⁵⁶ In particular, the Court condemned general exploratory searches unjustified by any government interest sufficiently significant to overcome the privacy invasion that such a search entails.⁵⁷

⁵⁰ Tomkovicz, 2007 U. ILL. L. REV. at 1419.

⁵¹ *Chimel v. California*, 395 U.S. at 762.

⁵² *Id.* at 763.

⁵³ *Id.* at 753-54.

⁵⁴ *Id.* at 763.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 764, 768; see also Harold J. Krent, *The Continuity Principle, Administrative Constraint, and the Fourth Amendment*, 81 NOTRE DAME L. REV. 53, 69 (2005) (citing numerous Supreme Court cases for the proposition that “searches incident to arrest must . . . be circumscribed to prevent a general search of the premises.”).

Because the *Chimel* decision involved search of a house, lower courts struggled in applying the search incident to arrest exception to vehicular searches following arrest of a defendant in his car.⁵⁸ In 1981, the Supreme Court in *New York v. Belton* finally addressed the lower courts' confusion by applying the search incident to arrest exception to the context of a vehicular search after arrest of vehicle occupants.⁵⁹ The Court in *Belton*, which involved a search incident to an arrest for drug possession, created a *per se* rule that, for purposes of the search incident to arrest exception, the "area within the arrestee's reach" extended to the entire passenger compartment of the car in which the defendant was arrested—even where the defendant could not in actuality reach the entire compartment.⁶⁰ Police officers therefore had automatic authority to search the arrestee's entire passenger compartment incident to arrest, regardless of whether the arrestee was actually capable of accessing potential weapons or evidence within the passenger compartment.⁶¹ In extending the arrestee's imputed reach to the entire passenger area, the Court emphasized the need for an understandable "bright-line" rule providing police officers with clear guidelines as to the permissible scope of a search.⁶²

Even while establishing a bright-line rule that effectively allowed searches outside the area within the arrestee's actual reach, the Court made clear that it intended to create only a narrow exception to *Chimel*, because the exception was dictated by the need for a clear rule.⁶³ The Court otherwise remained ostensibly dedicated to limiting the vehicular search incident to arrest exception to searches justified by the *Chimel* rationales of officer safety and preservation

⁵⁸ See, e.g., *United States v. Rigales*, 630 F.2d 364 (5th Cir. 1980); *United States v. Sanders*, 631 F.2d 1309 (8th Cir. 1980); *United States v. Dixon*, 558 F.2d 919 (9th Cir. 1977); *Hinkel v. Anchorage*, 618 P.2d 1069 (Alaska 1980); *Ulesky v. State*, 279 So. 2d 121 (Fla. App. 1979).

⁵⁹ 453 U.S. at 460.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

of evidence.⁶⁴ In the years following *Belton*, the Court’s bright-line emphasis seemed to endanger the *Chimel* limitations on searches incident to arrest as, in an era where most arrestees were fully secured in police custody before officers began to search their vehicles (and therefore the arrestee’s ability to “reach” the passenger area of his car was virtually always a legal fiction), officers had increasingly free rein to conduct searches even where the arrestee had no real opportunity to grab weapons or evidence.⁶⁵ At the same time the *Belton* bright-line rule seemed to obfuscate the original justifications for the search incident to arrest exception, however, the Court continued to reiterate its intent to limit searches incident to arrest to the dual *Chimel* rationales of officer safety and evidence preservation.⁶⁶

Nearly thirty years after *Chimel*, the Court in *Knowles v. Iowa* explicitly refused to extend the *Belton* bright-line rule to a vehicular search incident to a speeding citation, on the grounds that evidence related to the speeding violation was unlikely to be found and concerns for officer safety and preservation of evidence were not present.⁶⁷ As the Court in *Knowles* pointed out, once the defendant had been stopped and issued a citation for speeding, all the evidence necessary to prosecute the offense had already been obtained, and it was unreasonable for an officer to believe that further evidence of speeding would be found in the car.⁶⁸ Search of the vehicle in such an instance was therefore a privacy invasion unjustified by any recognized

⁶⁴ *Id.* (“Our holding today...in no way alters the fundamental principles established in the *Chimel* case regarding the basic scope of searches incident to...arrests”).

⁶⁵ *See, e.g.,* *United States v. Humphrey*, 208 F.3d 1190, 1202 (10th Cir. 2000) (holding that *Belton*’s emphasis on creating a bright-line rule for officers to follow makes the actual ability of an arrestee to reach evidence or weapons in his vehicle a moot point); *United States v. McLaughlin*, 170 F.3d 889, 891 (9th Cir. 1999) (reasoning that, because *Belton* created a bright-line rule that may be invoked regardless of whether the arresting officer has an actual concern for safety or evidence, the applicability of the *Belton* rule does not depend upon the arrestee’s actual ability to reach items in his car).

⁶⁶ *See Knowles v. Iowa*, 525 U.S. 113, 119 (1998).

⁶⁷ *Id.* at 119.

⁶⁸ *Id.* at 118.

government interest.⁶⁹ The *Knowles* insistence on prohibiting a vehicular search unless justified by one of the *Chimel* rationales would seem at first glance to override lower courts' decisions to permit vehicular searches even where the *Chimel* rationales are not present.⁷⁰ However, *Knowles* involved a search incident to citation, rather than arrest, and the Court in *Knowles* emphasized that citations involve lesser safety and evidentiary concerns than arrests.⁷¹ The Court's unwillingness to permit the search in *Knowles* is relevant to this paper, however, because the nonevidentiary offenses which this paper addresses are often nearly analogous in severity (or more accurately, lack of severity) to the speeding violation at issue in *Knowles*.

Finally, in 2004, the Supreme Court in *Thornton* applied the search incident to arrest exception to search of a vehicle after arrest of a "recent occupant."⁷² Choosing to avoid any differentiation between actual and recent occupants, the Court held that the *Belton* rule permitting police officers to search the entire passenger compartment of an automobile after arrest applied to recent occupants as well.⁷³ Although an arrestee is almost certainly unable to reach for weapons or evidence from his car when not even present in the car at the time of arrest, the Court reasoned that two considerations mandated extension of the *Belton* rule to recent occupants. First, the Court sought to protect officers by allowing them the discretion to wait to make an arrest until after the defendant has exited his vehicle, without compromising their ability

⁶⁹ *Id.*

⁷⁰ *See, e.g., Humphrey*, 208 F.3d at 1202; *McLaughlin*, 170 F.3d at 891.

⁷¹ 525 U.S. at 119 ("Here we are asked to extend [the *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.")

⁷² 541 U.S. at 623. The United States Supreme Court has never precisely defined the spatial and temporal limitations of the term "recent occupant," but that term has been generously applied by lower courts to encompass persons arrested as far as forty feet away from their vehicle, and as much as ten minutes after exiting their vehicle. *See, e.g., United States v. Poggemiller*, 375 F.3d 686, 686-87 (8th Cir. 2004); *United States v. Edwards*, No. C.R.A. 042000201 KHV, 2004 WL 1534173, at *4 (D. Kan. June 21, 2004). In one notable instance, an arrestee was deemed a recent occupant even after he had exited his vehicle at a repair shop, requested an oil change, and had an auto alarm installed in his car. *Black v. State*, 810 N.E.2d 713 (Ind. 2004).

⁷³ 541 U.S. at 623.

to search the car incident to arrest;⁷⁴ and second (consistent with its reasoning in *Belton*), the Court sought to preserve its bright-line rule that avoided forcing officers to estimate what items may have been within actual reach of the arrestee while he was in his car.⁷⁵ While extending the *Belton* bright line to searches incident to arrest of recent vehicle occupants, the Court again reiterated that the search incident to arrest exception remained tied to the original *Chimel* rationales allowing searches only where necessary to protect officers and preserve evidence, except when overridden by the need for a clear rule that does not endanger officers or force them to engage in impossible guessing games.⁷⁶

Although the facts of both *Belton* and *Thornton* involved searches for evidence related to the crime of arrest,⁷⁷ Justice Scalia, in his concurring opinion in *Thornton*, suggested that the Court ward off future deterioration of Fourth Amendment protections by explicitly limiting the search incident to arrest exception to those searches involving evidence related to the crime of arrest.⁷⁸ The four-member plurality declined such explicit limitation because the issue of searches unrelated to the crime of arrest had not been raised by either party.⁷⁹ Justice O'Connor wrote a separate concurrence expressing her approval of Scalia's explicit prohibition on searches that could not reasonably involve evidence related to the crime of arrest, but sided with the plurality in reasoning that such a rule could not be adopted in *Thornton* because the issue had not been raised by either party.⁸⁰ In the four years since *Thornton* was decided, a disturbing number of lower courts have interpreted the *Thornton* bright-line as permitting general vehicular searches incident to arrest even where the justifications of officer safety and evidence preservation are

⁷⁴ *Id.* at 621-22.

⁷⁵ *Id.* at 623.

⁷⁶ *Id.*

⁷⁷ Both *Thornton* and *Belton* involved arrests for drug possession. 541 U.S. at 618; 453 U.S. at 455-56.

⁷⁸ *Id.* at 632 (Scalia & Ginsburg, JJ., concurring).

⁷⁹ *Id.* at 624 (plurality).

⁸⁰ *Id.* at 624-25 (O'Connor, J., concurring).

absent and the officer could not reasonably believe that evidence related to the crime of arrest might be found.⁸¹

The Supreme Court has in recent years repeatedly affirmed officers' authority to arrest suspects accused of even the most minor offenses,⁸² and many lower courts have followed suit.⁸³

⁸¹ See *Osife*, 398 F.3d at 1147-48 (wryly noting that evidence of the defendant's crime of public urination was not likely to be found in his pickup truck, but nonetheless (in the author's opinion, erroneously) concluding that *Thornton* dictated that such a search is permitted under the search incident to arrest exception); *United States v. Mapp*, 476 F.3d 1012, 1014-15, 1019 (D.C. Cir. 2007) cert. denied, 127 S.Ct. 3031 (2007) (relying on *Thornton* to uphold search incident to arrest of a vehicle where the occupants was arrested for failure to yield on a left-hand turn). Although the Ninth and D.C. Circuits are the only federal circuit courts to apply *Thornton* directly to the situation where it is clearly unreasonable to believe that evidence related to the crime of arrest would be found in the vehicle, several state courts have at least addressed the question of whether *Thornton* permits searches that cannot reasonably involve evidence related to the crime of arrest. See *State v. Eckel*, 185 N.J. 523, 536 (N.J. 2006) (acknowledging that Scalia's suggested prohibition on searches subsequent to nonevidentiary offenses did not prevail, but interpreting the New Jersey Constitution as providing that "[o]nce the occupant of a vehicle has been arrested, removed and secured elsewhere, the considerations informing the search incident to arrest exception are absent and the exception is inapplicable"); *State v. Scott*, 200 S.W.3d 41, 43-44 (Mo. Ct. App. 2006) (en banc) (noting that Scalia's *Thornton* concurrence was merely a "propos[al]" to limit searches incident to arrest "to situations in which it is reasonable that evidence relevant to the crime of arrest might be found in the vehicle," but concluding that the *Thornton* plurality did not mandate such a rule); *Rector v. Commonwealth*, 2007 VA App. Lexis 58, at *9-10 (Va. Ct. App. Feb. 20, 2007) (unpublished) ("To the extent some past or present members of the United States Supreme Court may believe *Belton*'s reach is too broad, a majority of the Court in *Thornton* expressly declined to consider whether '*Belton* should be limited 'to cases where it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.'").

Additionally, a large number of both federal and state courts have simply read *Thornton* as *per se* permitting vehicular searches incident to arrest regardless of whether the specific factual situation of each arrest is justified by the *Chimel* rationales or any other recognized government interest. See, e.g., *United States v. Hrasky*, 453 F.3d 1099, 1100, 1103 (8th Cir.2006) (upholding search of an arrestee's car conducted after arrest for driving without a proper license, on grounds that the rule's "applicability does not depend on the presence of one of the specific reasons supporting a search incident to arrest"), cert. denied, 127 S.Ct. 2098 (2007); *State v. Waller*, 918 So.2d 363, 364, 366-68 (Fla. Dist. Ct. App. 2005) (upholding search of arrestee's truck conducted after he was handcuffed and "secured at the back of the truck"); *Rainey v. Commonwealth*, 197 S.W.3d 89, 91, 95 (Ky. 2006) (upholding search of arrestee's car conducted after he was handcuffed and "so far from his vehicle that it was unlikely he could have accessed it"), cert. denied, 127 S.Ct. 1005, (2007). *But see Gant*, 162 P.3d at 645 (Ariz. 2007) (holding that search of arrestee's car conducted after he had been handcuffed and placed in patrol car did not fall within the search incident to arrest exception because the rationales underlying the exception were absent).

⁸² *Atwater*, 532 U.S. at 323-24 (authorizing arrest of a suspect accused only of a seat belt violation, and stating that officers should not be required to distinguish between major and minor offenses when determining whether custodial arrest is permissible); *Brendlin v. California*, 127 S. Ct. 2400, 2410 n. 7 (2007) (affirming the holding of *Atwater*); see also *Robbins v. California*, 453 U.S. 420, 450-52 (1981) (Stevens, J., dissenting) (reasoning that, "[a]s a matter of constitutional law," any person lawfully arrested for even the pettiest misdemeanor may be placed in custody, and as a result, police officers maintain nearly unbridled discretion to make a custodial arrest of a motorist they stop for a minor traffic violation. "Such unbounded discretion carries with it grave potential for abuse.").

⁸³ See, e.g., *Ricci v. Vill. of Arlington Heights*, 116 F.3d 288 (7th Cir. 1997) (allowing arrest for failure to obtain a license to operate a telemarketing business); *Fisher v. Washington Metro. Area Transit. Auth.*, 690 F.2d 1133 (4th Cir. 1982) (allowing arrest for eating on the subway); *United States v. Herring*, 35 F. Supp. 2d 1253 (D. Or. 1999) (allowing arrest for littering); *Thomas v. Florida*, 614 So.2d 468 (Fla. 1993) (allowing arrest for failing to have a gong or bell on one's bicycle); *Barnett v. United States*, 525 A.2d 197, 198 (D.C. 1987) (allowing arrest for "walking as to create a hazard"); see also *Petula Dvorak, Metro Snack Patrol Puts Girl in Cuffs; 12-Year-Old Eating*

In an era where privacy rights of those charged with even the most trifling traffic violations are so in doubt, citizens have an increasingly critical need for the Court to affirmatively prohibit intrusive searches incident to such nonevidentiary offenses.⁸⁴

II. INTERPRETING *THORNTON*: WHY *THORNTON* SHOULD NOT BE READ AS PERMITTING SEARCHES FOR EVIDENCE UNRELATED TO THE CRIME OF ARREST

Lower courts and scholars have expended considerable effort attempting to make sense of the Supreme Court's obtuse *Thornton* opinion extending the vehicular search incident to arrest exception to recent occupants of vehicles.⁸⁵ This paper analyzes four plausible readings of the *Thornton* decision, suggesting that the Court could have been (in no particular order): 1) subtly intending to resurrect a previously recognized (and overturned) evidence-gathering rationale;⁸⁶ 2) pragmatically acknowledging that law enforcement officials regard evidence gathering as one of their most important tasks, and that creating separate rules for searches of vehicle occupants and recent occupants would simply endanger officers attempting to gather evidence;⁸⁷ 3)

Fries Among 35 Cited or Arrested in Zero-Tolerance Crackdown, *The Washington Post*, Nov. 11, 2000, at A1, available at 2000 WL 25428673.

⁸⁴ See, e.g., Adam Gershowitz, *The iPhone Meets the Fourth Amendment* (unpublished Jan. 15 2008) (available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1084503) (noting that the ease of arresting individuals suspected of the most minor crimes and searching vehicles incident to such arrests is “what Professor Donald Dripps has referred to as the ‘iron triangle’” because police can pull individuals over for pretextual reasons (so long as they can point to an almost unlimited number of traffic violations), arrest these individuals for virtually any minor infraction, and then proceed to search the individual for contraband totally unrelated to the stop and arrest); see also Donald A. Dripps, *The Fourth Amendment and the Fallacy of Composition: Determinacy Versus Legitimacy in a Regime of Bright Line Rules*, 74 MISS. L.J. 341, 393 (2004) (“The Iron Triangle means in practice that the police have general search power over anyone traveling by automobile.”).

⁸⁵ See, e.g., *supra*, note 79 (all cases); see also Edwin J. Butterfoss, *Bright Line Breaking Point: Embracing Justice Scalia's Call for the Supreme Court To Abandon an Unreasonable Approach to Fourth Amendment Search and Seizure Law*, 82 TUL. L. REV. 77, 97 (2007); James J. Tomkovicz, *Divining and Designing the Future of the Search Incident to Arrest Doctrine: Avoiding Instability, Irrationality, and Infidelity*, 2007 U. ILL. L. REV. 1417; George Dery & Michael J. Hernandez, *Turning a Government Search Into a Permanent Power: Thornton v. United States and the “Progressive Distortion” of Search Incident to Arrest*, 14 WM. & MARY BILL OF RIGHTS 677, 696 (2005); Dane C. Ball, *Thornton v. United States: Blurring Belton's Bright Line Rule Spells Disaster for Lower Courts and the Fourth Amendment*, 35 SW. U. L. REV. 1 (2005); David Rudstein, *Belton Redux: Reevaluating Belton's Per Se Rule Governing the Search of an Automobile Incident to Arrest*, 40 WAKE FOREST L. REV. 1287 (2005).

⁸⁶ 541 U.S. at 629.

⁸⁷ *Id.* at 621-22.

maintaining its emphatic insistence on bright-line rules for law enforcement officials;⁸⁸ or 4) presuming that officer safety is inherently at risk in every arrest, even after the arrestee has been secured in custody.⁸⁹ None of these four possible interpretations support the notion that *Thornton* should be extended beyond its facts to allow officers to search vehicles incident to arrests for nonevidentiary offenses.

1. Returning to an evidence-gathering rationale

The first plausible, and perhaps most popular, interpretation of the *Thornton* opinion is precisely what Justice Scalia suggested in his *Thornton* concurrence: that the Court, in placing its stamp of approval on a vehicular search even where the facts of *Thornton* indicated that the *Chimel* justifications of officer safety and evidence preservation were not present, was in essence reaffirming the evidence-gathering rationale that it had originally rejected in *Chimel*.⁹⁰ Prior to *Chimel*, the Court in *United States v. Rabinowitz* upheld a ninety minute search of a one-room office for stamps after the suspect was arrested in his office on suspicion of stamp fraud.⁹¹ The Court reasoned that search of “the place where the arrest is made in order to find and seize things connected with the crime” was reasonable under the Fourth Amendment,⁹² and specifically noted that the police officers were not engaging in a generalized, exploratory search.⁹³

Nearly twenty years after *Rabinowitz*, the Court in *Chimel* soundly rejected the *Rabinowitz* notion that the fact of arrest alone justifies a search of the entire surrounding area for

⁸⁸ *Id.* at 622-23.

⁸⁹ *Id.* at 621.

⁹⁰ 541 U.S. at 629 (Scalia, J., concurring) (“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.”).

⁹¹ *Id.* at 58-59.

⁹² *Id.* at 61.

⁹³ 339 U.S. 56, 62 (1950), *overruled by Chimel*.

evidence related to that arrest.⁹⁴ However, as Justice Scalia pointed out in his *Thornton* concurrence, evidence-gathering searches incident to arrest had been repeatedly approved prior to *Chimel*.⁹⁵ Further, the Court in *Thornton* offered little other rational explanation for its decision to extend searches incident to arrest to those which in reality cannot be justified by either the need to protect officers or preserve evidence.⁹⁶

If Justice Scalia is correct and the Court in *Thornton* was intentionally (albeit implicitly) approving warrantless searches incident to arrest for evidence related to the crime of arrest, such an evidence-gathering rationale would still not extend to searches where an officer could not reasonably believe that evidence related to the crime of arrest would be found. In *Rabinowitz*, the officers arrested a man for producing fraudulent stamps, and searched the man's office for evidence of those stamps.⁹⁷ Similarly, police officers in both *Belton* and *Thornton* searched the arrestees' vehicles for evidence of drugs (the crimes for which the defendants were arrested).⁹⁸ In contrast, where an individual has been arrested for a nonevidentiary offense (for example, a traffic offense such as speeding or a seat belt violation),⁹⁹ the officer cannot reasonably hope to find evidence of such an offense during search of the car.¹⁰⁰ In such a case, search of the vehicle would be unjustified by any desire to uncover evidence related to the crime of arrest. Even if the Court in *Thornton* fully intended to liberalize the search incident to arrest exception by permitting officers to search vehicles for the purpose of gathering evidence related to the crime

⁹⁴ 395 U.S. at 763 (citing *Katz v. United States*, 389 U.S. 347, 357-58 (1967) (holding that “[s]uch searches, in the absence of well-recognized exceptions, may be made only under the authority of a search warrant.”)).

⁹⁵ 541 U.S. at 629 (Scalia, J., concurring) (citing *Harris v. United States*, 331 U.S. 145 (1947); *Marron v. United States*, 275 U.S. 192, 199 (1927); *Agnello v. United States*, 269 U.S. 20, 30 (1925)).

⁹⁶ 541 U.S. at 631 (Scalia, J., concurring) (“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*.”).

⁹⁷ 339 U.S. at 58-59.

⁹⁸ *Belton*, 453 U.S. at 455-56; *Thornton*, 541 U.S. at 618.

⁹⁹ See *Atwater*, 532 U.S. at 323-34.

¹⁰⁰ See *Knowles*, 525 U.S. at 118 (acknowledging that there are some instances in which it is simply unreasonable to believe that search of a vehicle will uncover evidence related to the crime of arrest).

of arrest, such a rationale cannot justify an equally (or more) invasive search of a vehicle where the government cannot justify the search by even the limited interest it has in gathering evidence related to the crime of arrest.

2. Pragmatically recognizing that law enforcement officials place great emphasis evidence-gathering

A second plausible justification for the Court’s decision in *Thornton* to extend the vehicular search incident to arrest exception to “recent occupants” of vehicles is that the Court was simply recognizing that police officers are motivated by a desire to gather evidence.¹⁰¹ Given this motivation, the Court did not want to create separate rules for searches of actual vehicle occupants and searches of recent occupants, because if officers know they are unable to search the vehicle of a recent occupant, they may decide to arrest suspects in their vehicles when it would be safer to arrest the suspects after they stepped outside their vehicle.¹⁰²

This pragmatism, of course, finds little justification in the Constitution—the very reason the Fourth Amendment exists is to protect individuals from the overly zealous evidence-gathering pursuits of government officials.¹⁰³ However, even if the Court in *Thornton* found the safety concerns of police officers so compelling as to justify allowing vehicular searches of

¹⁰¹ 541 U.S. at 621-22 (“In some circumstances it may be safer and more effective for officers to conceal their presence from a suspect until he has left his vehicle. Certainly that is a judgment officers should be free to make. But under the strictures of petitioner’s proposed [differentiation between actual and recent occupants], officers who do so would be unable to search the car’s passenger compartment in the event of a custodial arrest . . .”).

¹⁰² *Id.* at 627; see also Edwin J. Butterfoss, *Bright Line Breaking Point: Embracing Justice Scalia’s Call for the Supreme Court To Abandon an Unreasonable Approach to Fourth Amendment Search and Seizure Law*, 82 TUL. L. REV. 77, 97 (2007) (arguing that the Court in *Thornton* rationalized its decision to uphold a search carried out after the arrestee had been restrained by theorizing that if such a search was declared unlawful, an officer would be put in the unsafe position of arresting the suspect in his vehicle—or even performing the search before restraining the arrestee—rather than surrendering the power to search).

¹⁰³ See, e.g., *Chimel*, 395 U.S. at 760-61 (reasoning that Congress created the Fourth Amendment as a protection against the governmental intrusion that warrantless searches imposed on private citizens); *McDonald v. United States*, 335 U.S. 451, 453 (1948) (protection against search and seizure is “one of the unique values of our civilization” which, with few exceptions, prevents police from intruding on personal property except by authority of a warrant).

recent occupants who can almost certainly not reach the vehicle to seize weapons or evidence,¹⁰⁴ such a finding still does not justify allowing warrantless searches in instances where an officer cannot reasonably believe that evidence related to the crime of arrest will be found in the vehicle. A rule prohibiting officers from engaging in searches that do not involve evidence related to the crime of arrest (and that are not already justified by either of the *Chimel* rationales) would treat actual occupants and recent occupants identically: after the arrestee has been secured, an officer cannot go back and rummage through the vehicle for evidence unrelated to the crime of arrest. The rule would thus not cause any concern for officers making unsafe decisions to arrest people in their car in order to take advantage of the ability to search the car,¹⁰⁵ because the prohibition against searches for evidence unrelated to the crime of arrest would apply equally to both situations.

Some would suggest that a rule even narrowly limiting officers' ability to search vehicles incident to a custodial arrest would encourage officers to engage in unsafe behavior by leaving suspects unrestrained in their vehicles so that officers can search the area actually within the suspects' reach.¹⁰⁶ This fear is remote indeed. Police manuals nationwide consistently instruct officers not to engage in searches of vehicles until after the vehicle occupants have been secured in custody away from the vehicle.¹⁰⁷ Even officers inordinately interested in evidence-gathering would presumably not be so foolish as to endanger their safety by leaving suspects in a vehicle

¹⁰⁴ 541 U.S. at 622.

¹⁰⁵ *Id.* at 621-22.

¹⁰⁶ See Butterfoss, 82 TUL. L. REV. at 97.

¹⁰⁷ See, e.g., Md. Police & Corr. Training Comm'n Training Unit 34: Arrest Procedures 9 (rev. Dec. 13, 1999); U.S. Dep't of Interior, Nat'l Park Service, U.S. Park Police, General Order 2103.04: Arrest Procedures (as revised on Sept. 30, 1999); U.S. Dep't of Justice, Drug Enforcement Admin., Agency Regulation 6653.3: Search Procedures (n.d.); Boston Police Dep't, Rules and Procedures: Rule 315, Sec. 6 (n.d.); Boston Police Acad., Training Bulletin 26-89: Searching Prisoners (n.d.); Balt. County Police Dep't, Employment & Basic Training Div., Lesson Plan: Self Defense Tactics, Searching and Pat Downs 1 (2000); Mo. P.O.S.T. Comm'n, Training Materials 5 (n.d.) (provided by the Kansas City Police Department); Ill. State Police Acad., Control and Arrest Tactics: Lecture Outline 71 (Mar. 1999).

when they have no reason to believe that evidence related to the crime of arrest is will be found.¹⁰⁸

3. Obsession with bright line rules: desire to protect officers from being forced to make difficult decisions

A third possible justification for the Court's decision in *Thornton* to extend the search incident to arrest exception to recent occupants is that the Court simply placed an enormous emphasis on the value of bright-line rules for police officers, which would protect officers from being forced to make a difficult estimate as to whether a recent occupant was able to reach his vehicle at the time of arrest.¹⁰⁹ However, bright line rules can only justify so much.¹¹⁰ A rule prohibiting officers from engaging in searches for evidence unrelated to the crime of arrest would in no way endanger this Court's interest in imposing easily understandable bright-line rules.

Determining whether evidence related to the crime of arrest might be found is not difficult.¹¹¹ Prohibiting exploratory searches for evidence unrelated to the crime of arrest does not endanger the bright-line rule by demanding that police officers make impossible conjectures as to what evidence the arrestee could have reached while he was still in the vehicle. The rule merely asks an officer to decide, after the difficult work of securing an arrestee has been

¹⁰⁸ *Thornton*, 541 U.S. at 627 (Scalia, J., concurring) (“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.”).

¹⁰⁹ *Id.* at 622-23 (“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”).

¹¹⁰ See *Mincey v. Arizona*, 437 U.S. 385, 393 (1978) (“The investigation of crime would always be simplified if warrants were unnecessary. But the Fourth Amendment reflects the view of those who wrote the Bill of Rights that the privacy of a person’s home and property may not be totally sacrificed in the name of maximum simplicity in enforcement of the criminal law.”); Leslie A. Lunney, *The (Inevitably) Arbitrary Placement of Bright Lines: Belton and its Progeny*, 79 TUL. L. REV. 365, 369 (2004) (“The need for clarity in defining the permissible scope of searches incident to arrest can only justify so much. A rule allowing police officers to search whomever or whatever they would like, at any time, for any or no reason, is also a bright-line rule, the application of which would be readily understood by police officers and suspects alike.”).

¹¹¹ *Cf. Belton*, 453 U.S. at 460 (attempting to figure out what portion of the car defendant could have reached had he still been in the car).

completed, whether search of the arrestee’s vehicle might reasonably reveal evidence related to the crime of arrest. In *United States v. Robinson*, the Court emphasized the importance of clear rules in holding that an officer is justified in searching the person of an arrestee even where no danger is evident, because where officer safety or imminent evidence destruction is involved, officers should not be required to make nuanced judgments in the heat of the moment.¹¹² The situation is entirely different when evidentiary searches are at stake: in the context of a general evidence-gathering search after the arrestee has already been secured and the heat of the moment has effectively passed, the government has no equivalent interest justifying further extension of the bright-line rule.¹¹³

Where an arrestee is fully secured in custody and the officer need only determine whether search of the arrestee’s vehicle could reasonably be expected to turn up evidence related to the crime of arrest, the officer may easily make that determination without sacrificing safety or engaging in impossible guessing games as to proper procedure.¹¹⁴ Many Fourth Amendment issues are resolved by standards that are not at all “bright”: officers need “probable cause” to arrest a suspect, may conduct warrantless searches of a home only under “exigent circumstances,” and may stop a vehicle only when justified by “reasonable suspicion.”¹¹⁵ Once an arrestee is secured in custody—as will be the case prior to virtually every vehicular search

¹¹² 414 U.S. 218, 235 (1973).

¹¹³ *Thornton*, 541 U.S. at 632 (Scalia, J., concurring).

¹¹⁴ *Cf. Robinson*, 414 U.S. at 235 (determining whether or not a suspect is likely to have weapons on his person); *Atwater*, 532 U.S. at 348 (determining whether to make an arrest based on the severity of penalty the defendant may face if convicted).

¹¹⁵ *See Texas v. Brown*, 460 U.S. 730, 742 (1983) (“Probable cause is a flexible, common-sense standard”); *McDonald*, 335 U.S. at 456 (discussing situations in which “exigent circumstances” permit an officer to engage in an otherwise unjustified search); *Terry*, 392 U.S. at 21 (establishing the “reasonable suspicion” standard for police stops); *see also* Myron Moskowitz, *A Rule in Search of a Reason: An Empirical Reexamination of Chimel and Belton*, 2002 *Wis. L. Rev.* 657, 679.

incident to arrest—no urgency prevents an officer from engaging in the same thought process he employs in other, more demanding search or seizure situations.¹¹⁶

4. Believing that safety is inherently a concern in every arrest

The final plausible justification for the Court’s decision in *Thornton* to extend the search incident to arrest exception to recent occupants is that the Court believed that concerns for officer safety are inherently present in every arrest, even where the arrestee has been fully secured in custody before search of the vehicle.¹¹⁷ Certainly safety concerns at least factored into the Court’s opinion.¹¹⁸ However, the Court provided virtually no justification for its assumption that every arrest poses a threat to officer safety. The *Robinson* decision on which the Court in *Thornton* relied presents an easily—and importantly—differentiable fact situation.¹¹⁹ In *Robinson*, the Court held that an officer is justified in searching the person of an arrestee even where no danger seems present, because an officer cannot immediately know whether an unrestrained suspect presents a danger to the arresting officer.¹²⁰ It is drastically more reasonable to suggest that the arrestee himself presents an inherent threat to officer safety, and has a heightened likelihood of accessing weapons or evidence on his own person, than to justify search of the vehicle by suggesting that an arrestee who has been searched and secured in custody in the back of a police car nonetheless is able to access his vehicle for weapons.¹²¹

¹¹⁶ Moskowitz, 2002 Wis. L. Rev. at 691.

¹¹⁷ *Thornton*, 541 U.S. at 621 (quoting *Robinson*, 414 U.S. at 234-35 (“A custodial arrest is fluid and ‘[t]he danger to the police officer flows from the fact of the arrest, and its attendant proximity, stress, and uncertainty.’”)).

¹¹⁸ 541 U.S. at 621 (quoting *Washington v. Chrisman*, 455 U.S. 1, 7 (1982) (“Every arrest must be presumed to present a risk of danger to the arresting officer”).

¹¹⁹ 414 U.S. at 235.

¹²⁰ *Id.* at 222-23.

¹²¹ *Thornton*, 541 U.S. at 625 (Scalia, J., concurring) (“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 Scalia concurrence in *Thornton* pointed out the error of assuming that individuals secured in custody nonetheless present a danger to officers sufficient to merit search of the arrestee’s nearby vehicle.¹²² As Scalia noted, the United States government, the Respondent in *Thornton*, was unable to produce even a single example between 1990 and 2003 of a handcuffed arrestee retrieving weapons or evidence from his nearby vehicle.¹²³ The government’s brief pointed to a total of seven instances during that time span in which handcuffed arrestees used weapons to attack state or federal officers.¹²⁴ Of those seven instances, not one involved an arrestee obtaining a weapon from his vehicle.¹²⁵ Three cases involved arrestees who accessed weapons concealed on their own person,¹²⁶ three more dealt with arrestees who seized a weapon from the arresting officer,¹²⁷ and the final case involved a handcuffed arrestee who “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.”¹²⁸

Even if the Court in *Thornton* assumed that officer safety is always a threat in the circumstances of an arrest,¹²⁹ such brief and unsupported reasoning should not be applied beyond the factual situation of *Thornton* to permit searches in the entirely distinct context of arrests for nonevidentiary offenses. Nonevidentiary offenses tend to be very minor—involving, for example, traffic violations such as failure to wear a seat belt or missing license plate tags.¹³⁰ Even if the Court found it necessary to assume that safety concerns are always present in arrests

¹²² *Id.* at 625-26.

¹²³ *Id.* at 626.

¹²⁴ *Id.*; Brief for United States 38-39, n. 12.

¹²⁵ 541 U.S. at 626.

¹²⁶ See *United States v. Sanders*, 994 F.2d 200, 210, n. 60 (5th Cir. 1993) (two instances); U. S. Dept. of Justice, Federal Bureau of Investigation, Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted 49 (2001).

¹²⁷ See *Sanders*, 994 F.2d 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).

¹²⁸ *Thornton*, 541 U.S. at 626 (citing *Plakas v. Drinski*, 19 F.3d 1143, 1144-46 (7th Cir. 1994)).

¹²⁹ 541 U.S. at 621.

¹³⁰ See, e.g., *Atwater*, 532 U.S. at 323-24; *Gant*, 162 P.3d at 643.

for evidentiary offenses (or more specifically, in the felony drug arrests which were at issue in both *Belton* and *Thornton*)—which is itself a dubious proposition—that reasoning should not be extended to searches that are not only less likely to mitigate any safety threat, but are also more intrusive in nature than searches for evidence related to the crime of arrest.

Generalized, exploratory searches incident to arrests for nonevidentiary offenses will not only most often take place under far less volatile conditions,¹³¹ but are even more offensive to Fourth Amendment principles than are searches for evidence of the crime for which a suspect was just arrested.¹³² The Supreme Court has repeatedly condemned generalized exploratory searches unrelated to a specifically suspected crime.¹³³ The extremely remote threat to officer safety that an individual’s vehicle could pose after the individual has been arrested for a minor crime, personally searched, and secured in custody does not and cannot justify an exploratory rummaging through that vehicle incident to arrest.

III. CLARIFYING *THORNTON*: WHY THE SUPREME COURT MUST PROHIBIT EXPLORATORY SEARCHES FOR EVIDENCE UNRELATED TO THE CRIME OF ARREST

Fourth Amendment reasonableness analyses most often involve a balancing test of individual privacy interests versus the government interest in engaging in a search or seizure.¹³⁴ None of the four possible rationales for the *Thornton* decision discussed in part II of this paper justify general exploratory searches of vehicles by officers who cannot reasonably expect to uncover evidence related to the crime of arrest. Lower courts err if they read *Thornton* as sanctioning such searches. *Thornton* should never have been interpreted as permitting such

¹³¹ *Belton*, 453 U.S. at 455-56; *Thornton*, 541 U.S. at 618.

¹³² See *Maryland v. Garrison*, 480 U.S. 79, 84 (1987) (stating that the Fourth Amendment was intended to prohibit exploratory searches).

¹³³ *Id.*; see also *Andresen v. Maryland*, 427 U.S. 463, 480 (1976); *Stanford v. Texas*, 379 U.S. 476, 481-82, 485 (1965); *Go-Bart Importing Co. v. United States*, 282 U.S. 344, 357 (1931); *Marron v. United States*, 275 U.S. 192, 195-96 (1927).

¹³⁴ Tomkovicz, 2007 U. ILL. L. REV. at 1456.

searches, and the Court should use *Gant* as an opportunity to adopt the opinion of at least five justices in *Thornton*¹³⁵ and explicitly restrict vehicular searches incident to arrest to the factual situations already recognized by the Court—searches involving either a demonstrable need to protect officers, preserve evidence that would otherwise be at imminent risk of destruction,¹³⁶ or (perhaps) discover evidence related to the crime of arrest.¹³⁷ Adopting such a rule affirms the original limitations to the search incident to arrest exception laid out by the Court in *Chimel*, while still respecting the Court’s concern for providing police officers with clear rules for decision-making.¹³⁸

Warrantless searches for general evidence unrelated to the crime of arrest are not justified by either the *Chimel* rationales of officer safety and preservation of evidence, or by the need to prescribe clear rules that do not force officers to make decisions for which they are not equipped.¹³⁹ The *Chimel* rationales are no longer present where an arrestee has already been secured in custody prior to search of the arrestee’s vehicle.¹⁴⁰ Prohibiting warrantless searches for evidence unrelated to the crime of arrest certainly does not create a new safety hazard, because the rule applies equally to arrests of both occupants and recent occupants of vehicles, thus avoiding a situation that encourages officers to make unsafe arrests.¹⁴¹ A rule prohibiting

¹³⁵ The decision to refuse restricting searches for evidence unrelated to the crime of arrest was made only by the plurality in *Thornton*. 541 U.S. at 624, n. 4. Justices O’Connor, Scalia and Ginsburg expressly stated their approval of a rule prohibiting searches for evidence unrelated to the crime of arrest. *Id.* at 624-25. Justices Stevens and Souter simply disapproved of extending the search incident to arrest exception to recent occupants at all. *Id.* at 633.

¹³⁶ *Chimel*, 395 U.S. at 763.

¹³⁷ *Belton*, 453 U.S. at 455-56; *Thornton*, 541 U.S. at 618.

¹³⁸ *Thornton*, 541 U.S. at 621-23.

¹³⁹ *Chimel*, 395 U.S. at 763; *Thornton*, 541 U.S. at 623.

¹⁴⁰ *Thornton*, 541 U.S. at 625 (Scalia, J., concurring). To the extent that, in some unique context, safety is still a concern even in a nonevidentiary arrest where the arrestee has already been secured in custody, certainly the author’s proposed rule would not tamper with the officers’ ability to search the vehicle in that instance.

¹⁴¹ See *Thornton*, 541 U.S. at 621 (extending search incident to arrest exception to recent vehicle occupants out of concern that officers would compromise safety by making unsafe arrests of defendants in their vehicles in order to preserve their right to search the vehicle).

general exploratory searches has no bearing on an officer's prerogative to determine how and when to make an arrest.

The rule proposed today does not require an officer to engage in an infeasible decision-making process.¹⁴² The decision also need not be made in the face of potential danger, and does not involve an estimate that a police officer is not equipped to make.¹⁴³ The Court readily acknowledged in *Knowles* that in some instances it is simply unreasonable to believe that evidence related to the crime of arrest might be found in a vehicular search.¹⁴⁴ Where officer safety and evidence preservation are not concerns, and no bright-line rule is endangered by limiting the search to instances where evidence related to the crime of arrest might be found, the government has no interest sufficient to justify disregard of the warrant requirement. Refusal to limit searches would ultimately stretch the search incident to arrest exception "beyond its breaking point" by permitting warrantless searches which are not justified by any recognized rationales.¹⁴⁵ Many state courts have indeed recognized the problems inherent in authorizing

¹⁴² *Cf. Belton*, 453 U.S. at 460 (attempting to figure out what portion of the car the defendant could have reached had he still been in the car); *see also* Carol A. Chase, *Cars, Cops, and Crooks: A Reexamination of Belton and Carroll with an Eye Toward Restoring Fourth Amendment Privacy Protection to Automobiles*, 85 OR. L. REV. 913, 928 (2006) (pointing out that "the fact that several state courts expressly reject *Belton* and instead apply *Chimel* to automobile searches incident to arrest belies the contention that the *Chimel* rule is particularly difficult to apply in the context of arrests of automobile occupants.").

¹⁴³ *Cf. Robinson*, 414 U.S. at 235 (determining whether or not a suspect is likely to have weapons on his person); *Atwater*, 532 U.S. at 348 (determining whether to make an arrest based on the severity of penalty the defendant may face if convicted).

¹⁴⁴ 525 U.S. at 118; *see also, e.g., Atwater*, 532 U.S. at 323-24 (approving custodial arrest for seat belt violation); *Osife*, 398 F.3d. 1143, 1146-47 (9th Cir. 2005) (evidence of arrest for public urination not likely to be found in truck).

¹⁴⁵ *Thornton*, 541 U.S. at 625-26 (Scalia, J., concurring); *Chimel*, 395 U.S. at 764-65 ("It is argued in the present case that it is 'reasonable' to search a man's house when he is arrested in it. But that argument is founded on little more than a subjective view regarding the acceptability of certain sorts of police conduct, and not on considerations relevant to Fourth Amendment interests. Under such an unconfined analysis, Fourth Amendment protection in this area would approach the evaporation point."); *see also* Dane C. Ball, *Thornton v. United States: Blurring Belton's Bright Line Rule Spells Disaster for Lower Courts and the Fourth Amendment*, 35 SW. U. L. REV. 1, 2 (2005).

officers to search vehicles incident to every arrest, regardless of rationale.¹⁴⁶ These states have interpreted their constitutions as requiring greater protections.¹⁴⁷

In contexts outside of the search incident to arrest exception, the Supreme Court has repeatedly—and appropriately—condemned extension of Fourth Amendment exceptions beyond situations expressly justifying those exceptions.¹⁴⁸ In the search incident to arrest context, the Court in *Chimel* rejected any suggestion that general searches should be permitted based on the mere fact of arrest, holding that, under such reasoning, “Fourth Amendment protection in this area would approach the evaporation point.”¹⁴⁹ Even in *Rabinowitz*, which the Court in *Chimel* overruled as supporting an overly broad evidence-gathering rationale for warrantless searches,

¹⁴⁶ See, e.g., *Commonwealth v. White*, 669 A.2d 896, 902 (Pa. 1995) (determining that privacy interests inherent in the Pennsylvania Constitution restrict warrantless vehicular searches incident to arrest “to areas and clothing immediately accessible to the person arrested”); *State v. Gomez*, 932 P.2d 1, 13 (N.M. 1997) (restricting vehicular incident to arrest to areas accessible to the arrestee in accordance with *Chimel*, and stating that “[i]f there is no reasonable basis for believing an automobile will be moved or its search will otherwise be compromised by delay, then a warrant is required...We do not accept the federal bright-line automobile exception”); *Camacho v. State*, 75 P.3d 370, 373-74 (Nev. 2003) (choosing “to follow our previous cases where we rejected *Belton*’s reasoning and followed the earlier United States Supreme Court case of *Chimel v. California*”); *State v. Harnisch*, 931 P.2d 1359, 1365-66 (Nev. 1997) (holding the vehicular search incident to arrest exception is inapplicable where an arrestee has been secured in custody and removed from his vehicle, because the exception stems “from the need to disarm and prevent any evidence from being concealed or destroyed”); *Vasquez v. State*, 990 P.2d 476, 489 (Wyo. 1999) (rejecting the *Belton* bright-line rule in favor of the case-by-case *Chimel* approach, but expanding the permissible search to include a search for evidence relevant to the arrestee’s arrest even if the evidence is not in danger of destruction by the arrestee); *State v. Pierce*, 642 A.2d 947, 961 (N.J. 1994) (observing “that the *Belton* rule, as applied to arrests for traffic offenses, creates an unwarranted incentive for police officers to ‘make custodial arrests which they otherwise would not make as a cover for a search which the Fourth Amendment otherwise prohibits’”) (quoting 3 Wayne R. LaFare, *Search and Seizure* §7.1(c), at 21 (2d ed. 1987)); *State v. Eckel*, 888 A.2d 1266, 1277 (N.J. 2006) (“Once the occupant of a vehicle has been arrested, removed and secured elsewhere, the considerations informing the search incident to arrest exception are absent and the exception is inapplicable.”); *Commonwealth v. Toole*, 448 N.E.2d 1264, 1267-68 (Mass. 1983) (prohibiting search of a truck’s passenger compartment incident to arrest on state statutory grounds, where the arrestee had been handcuffed, arrested, secured in the police officer’s custody at the time the search was conducted); *State v. Brody*, 686 P.2d 451, 453 (Or. Ct. App. 1984); *State v. Kirsch*, 686 P.2d 446, 448 (Or. Ct. App. 1984) (“*Belton* is not the law of Oregon.”).

¹⁴⁷ *Supra*, note 144.

¹⁴⁸ See, e.g., *Horton v. California*, 496 U.S. 128 (1990) (warrantless searches must be circumscribed by the exigencies justifying their exception); *Terry*, 392 U.S. at 25-26 (in a stop and frisk, the stop must be limited to circumstances which justified initial intrusion); see generally, Harold J. Krent, *The Continuity Principle, Administrative Constraint, and the Fourth Amendment*, 81 NOTRE DAME L. REV. 53, 69 (2005) (analyzing Supreme Court case law to conclude that searches must be legitimated by the objectives underlying the initial search).

¹⁴⁹ 395 U.S. at 764-65.

the Court recognized that generalized, exploratory searches violated the Fourth Amendment.¹⁵⁰ The five concurring and dissenting justices in *Thornton* also raised serious concerns about the dangers inherent in expansively interpreting the *Belton* bright-line rule.¹⁵¹ Refusal to limit exploratory searches where an officer cannot reasonably believe that evidence related to the crime of arrest will be found would, as one commentator warned, effectively “declare open season” on the Fourth Amendment as applied to vehicles.¹⁵² If the Court refuses to prohibit warrantless exploratory searches in situations where evidence related to the crime of arrest might be found, the Court will have fulfilled Justice Scalia’s warning with which this paper begins.¹⁵³

CONCLUSION

The current state of the United States Supreme Court’s vehicular search incident to arrest jurisprudence is confusing, at best, and woefully underprotective at worst. The majority of lower courts currently interpret this Court’s search incident to arrest jurisprudence as *per se* permitting vehicular searches incident to arrest of all occupants or recent occupants, even where the search does not involve any threat of officer injury or evidence destruction, and has no possibility of uncovering evidence related to the crime of arrest.¹⁵⁴ The Supreme Court has—and should take advantage of—the occasion in *Gant* to affirm the Fourth Amendment’s significance by explicitly prohibiting searches incident to arrests for nonevidentiary offenses.

The bright-line rule stemming from *Belton* and *Thornton* is already very broad.¹⁵⁵ To extend it even further to allow exploratory searches for evidence unrelated to the crime of arrest

¹⁵⁰ 339 U.S. 56 (1950); *see also* *Maryland v. Garrison*, 480 U.S. 79, 84 (1987) (the Fourth Amendment was intended to prohibit exploratory searches).

¹⁵¹ 541 U.S. at 625, 632, 636.

¹⁵² *See* Marcia Coyle, *Justices Rage over Dwindling Road Rights*, *Nat’l L.J.* (2004), May 31, 2004, at 1, 22.

¹⁵³ *Thornton*, 541 U.S. at 628 (Scalia, J., concurring) (citing *McLaughlin*, 170 F.3d at 894 (Trott, J., concurring)).

¹⁵⁴ *Supra*, note 81.

¹⁵⁵ *Belton*, 453 U.S. at 460; *Thornton*, 541 U.S. at 623.

would be to negate the critical protections the Fourth Amendment is designed to offer.¹⁵⁶ The American people fought a bloody Revolution in order to secure the safeguards of the Fourth Amendment.¹⁵⁷ The United States Supreme Court should not lightly disregard those sacrifices for the sake of mere convenience or efficiency.

¹⁵⁶ *See, e.g.*, *Gouled v. United States*, 255 U.S. 298, 303-04 (1921) (“It would not be possible to add to the emphasis” which this Court has placed on the rights guaranteed by the Fourth Amendment); *Byars v. United States*, 273 U.S. 28, 32 (1927) (Fourth Amendment protections extend to offenders as well as the law abiding); *McDonald v. United States*, 335 U.S. 451, 453 (1948) (protection against search and seizure is “one of the unique values of our civilization” which, with few exceptions, prevents police from intruding on personal property except by authority of a warrant).

¹⁵⁷ *Chimel*, 395 U.S. at 760-61.