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New York v. Belton and State Constitutional Doctrine

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NEW YORK v. BELTON AND STATE CONSTITUTIONAL DOCTRINE

Eugene L. Shapiro

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I. INTRODUCTION

Shortly after the Supreme Court’s opinion in New York v. Belton, it was suggested that some state courts might be disinclined to follow its lead when developing their own state constitutional doctrines. Belton had, after all, dra-

* Professor of Law, Cecil C. Humphreys School of Law, The University of Memphis. I wish to thank the Cecil C. Humphreys School of Law for its support for this project.


2 Catherine Hancock, State Court Activism and Searches Incident to Arrest, 68 VA. L. REV. 1085, 1085-86, 1132-36 (1982).
matically changed Fourth Amendment analysis governing a search incident to the arrest of a motor vehicle's occupant, and, as Professor Catherine Hancock then noted, some state courts had pursued their own courses concerning searches of the person of an arrestee.³ Twenty years have passed since the creation of the Belton doctrine, and during that period state constitutional developments have indeed included a principled and often carefully-considered examination of the doctrine's potential application in the interpretation of state guarantees. Among those jurisdictions considering the scope of vehicular searches incident to arrest, nine have found the Belton doctrine to be unsuitable to their state constitutional analysis. Others have endorsed its approach. An examination of these opinions presents a study in state constitutional diversity, as well as a context within which some of the nuances of Belton may be explored.

Initially, this article will discuss the status of Belton as federal doctrine today. It will then examine those state constitutional opinions which have rejected Belton's approach, in whole or in part. Finally, it will review those which have adopted the doctrine as a matter of state constitutional law.

II. THE FEDERAL DOCTRINE

Belton represented a sharp departure indeed from the preceding law governing searches of the area surrounding an arrestee. In Chimel v. California,⁴ applying the basic principle that the scope of a warrantless search must be tied to its justifications,⁵ the Court narrowly tailored the permissible scope of a warrantless search incident to arrest. In Chimel, the defendant had been arrested in his home for the burglary of a coin shop.⁶ The entire three-bedroom house was then searched. The officers looked in the attic, the garage, and a small workshop, and while they were in the master bedroom and sewing room the officers directed Chimel's wife to open drawers and move their contents.⁷ Coins, tokens, and other items were seized and were subsequently admitted into evidence at Chimel's burglary trial.⁸

Proceeding on the assumption that Chimel's arrest had been valid,⁹ the Court addressed the issue of whether the search was permissible as incident to that arrest.¹⁰ Extensively reviewing the history of such warrantless searches, it

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³ Id. at 1121-28.
⁶ 395 U.S. at 753.
⁷ Id. at 754.
⁸ Id.
⁹ Id. at 755. The affidavit supporting the arrest was insufficient, id. at 754 n.1, but the state courts had held the arrest to be valid and the court elected to proceed on this basis. Id. at 754-55.
¹⁰ Id. at 755.
stated that at the time of an arrest the justification for an immediate warrantless search is twofold. In order to avoid endangering the safety of the arresting officer, a search for any weapon that the arrestee might use in order to resist arrest or escape is appropriate. Similarly, it is reasonable to search for and seize any evidence which might be concealed or destroyed. As these justifications permit a warrantless search of the arrestee, "the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule."

The Court concluded that there was "ample justification" for a search of the arrestee and the area "within his immediate control." It construed that phrase "to mean the area from within which he might gain possession of a weapon or destructible evidence." Reversing Chimel's conviction, the Court found no such justification for searching any room other than that in which an arrest occurs, or for indiscriminately searching closed inaccessible areas in that room. Nevertheless, despite the fact-specific nature of the Chimel standard, in United States v. Robinson the Court subsequently authorized a full, routinized search of the person of an arrestee.

In Robinson, the defendant had been arrested for driving a motor vehicle after the revocation of his operator's permit. While Robinson was outside the vehicle, the arresting officer patted him down, revealing an unknown object in Robinson's left breast pocket. The officer reached in and retrieved a crumpled cigarette package. Without knowing the contents of the package but concluding that they were not cigarettes, the officer opened it and found fourteen gelatin capsules containing heroin. Robinson was convicted for their possession.

While the Court of Appeals held that the absence of any possible evidence concerning Robinson's vehicular offense had foreclosed reliance upon the search as one incident to arrest, the Supreme Court disagreed. The Court cited the need to protect an arresting officer by disarming a suspect who is taken into custody. Contrasting the situation with the brief investigative encounter justifying a frisk under Terry v. Ohio, the Court stated:

11 Chimel, 395 U.S. at 762-63.
12 Id. at 763.
13 Id.
14 Id.
15 Id.
16 Id. at 763, 768.
18 Id. at 220-23.
19 Id. at 223.
20 Id. at 223-24.
It is scarcely open to doubt that the danger to an officer is far greater in the case of the extended exposure which follows the taking of a suspect into custody and transporting him to the police station than in the case of the relatively fleeting contact resulting from the typical Terry-type stop. This is an adequate basis for treating all custodial arrests alike for purposes of search justification.

But quite apart from these distinctions, our more fundamental disagreement with the Court of Appeals arises from its suggestion that there must be litigated in each case the issue of whether or not there was present one of the reasons supporting the authority for a search of the person incident to a lawful arrest . . . . It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a "reasonable" search under that Amendment.21

The bright-line quality of Robinson's rule proved to be a precursor to the Court's approach in Belton. With regard to the area surrounding an arrestee, Chimel has continued to require officers to make a case-by-case determination of those areas to which an arrestee might gain access. It remains the rule outside of those situations governed by Robinson and Belton, and, not surprisingly, both a desire to preserve the safety of the police and an acknowledgment of the difficulty of on-the-spot decisionmaking have often resulted in a wide construction of the scope of that "reaching" or "grabbing" area.22

Belton was decided during a period when the Court had expressed concern about the dangers presented to officers by individuals in automobiles.23 The five justice majority appears to have been eager to address the issue of when and how the passenger compartment of an automobile might be searched incident to the arrest of an occupant. (An alternative and potentially straightforward basis for the decision, that the search involved had been authorized under the "automobile exception," was not explored.24) The facts of Belton afforded

21 Id. at 234-35.
22 See, e.g., United States v. Turner, 926 F.2d 883, 888 (9th Cir. 1991) (handcuffing and removing arrestee from room did not ameliorate danger); State v. Roberts, 623 N.W.2d 298, 305 (Neb. 2001) (same).
24 See Belton, 453 U.S. at 463 n.6.
the Court an opportunity to describe more than just the general outlines of a permissible search.

In April of 1978, an automobile occupied by four men was stopped by Trooper Douglas Nicot for speeding on the New York Thruway. When Nicot asked for the driver's license and registration, he learned that none of the men owned the vehicle or was related to its owner. During that period, the trooper smelled burnt marijuana and saw an envelope on the floor of the car which was marked with the word "Supergold." Trooper Nicot associated the term with marijuana, and he ordered the men, including Roger Belton, out of the car and placed them under arrest for possession of the drug.

Trooper Nicot patted down each of the men and "split them up into four separate areas of the Thruway . . . so they would not be in physical touching area of each other." He then picked up the envelope, examined it, and found that it contained marijuana. Miranda warnings were given and each of the men was searched. Nicot then returned to the passenger compartment of the car. He found a black leather jacket belonging to Belton on the back seat. He opened the jacket's zipper pocket and discovered cocaine. The jacket and drugs were seized, and Belton was charged with possession of a controlled substance. After the subsequent denial of his motion to suppress the cocaine, Belton pleaded guilty to a lesser-included offense. His conviction was reversed by the New York Court of Appeals on the ground that the search of the zipper pocket exceeded the permissible scope of a search incident to a lawful arrest.

In its opinion, the Court, per Justice Stewart, reviewed the principles set forth in Chimel, adding that in some cases they had proven to be difficult to apply. It noted that implementation of the Fourth Amendment's protections depended upon whether the police act "under a set of rules which, in most instances, makes it possible to reach a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement." Accordingly, the Court stated that a "single, familiar standard is essential to

25 Id. at 455.
26 Id. at 455-56.
27 Id. at 456.
28 Id.
29 Id.
30 Id.
31 Id.
32 Justice Stewart had been the author of the Court's opinion in Chimel.
33 Belton, 453 U.S. at 458.
34 Id. (quoting Wayne R. LaFave, "Case By-Case Adjudication" Versus "Standardized Procedures": The Robinson Dilemma, 1974 Sup. Ct. Rev. 127, 142). As will be noted infra, Professor LaFave has been a leading critic of the Court's approach in Belton.
guide police officers," and it praised the virtues of Robinson, in which it had "hewed to a straightforward rule, easily applied, and predictably enforced . . . ."

Turning to the question of the appropriate scope of a search of the interior of an automobile incident to the arrest of an occupant, Justice Stewart observed that lower courts had divided on the matter when the arrestee was no longer in the vehicle. In implementing Chimel, courts had "found no workable definition of 'the area within the immediate control of the arrestee'" when dealing with a "recent" occupant. The Court then observed that articles within the passenger compartment of a car "are in fact generally, even if not inevitably, within 'the area into which an arrestee might reach . . . .'" It then established the broad rule which departed from Chimel's case-by-case methodology:

In order to establish the workable rule this category of cases requires, we read Chimel's definition of the limits of the area that may be searched in light of that generalization. Accordingly, we hold that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile.

It follows from this conclusion 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. Such a container may, of course, be searched whether it is open or closed, since the justification for the search is not that the arrestee has no privacy interest in the container, but that the lawful custodial arrest justifies the infringement of any privacy interest the arrestee may have.

The Court added that its holding did "no more than determine the meaning of Chimel's principles" in this "particular and problematic" context.

The search of Belton's zippered pocket was valid. The Court defined a container subject to examination as any object capable of holding another: "It thus includes closed or open glove compartments, consoles, or other receptacles

35 Id. (quoting Dunaway v. New York, 442 U.S. 200, 213-14 (1979)).
36 Id. at 459.
37 Id. at 460.
38 Id. (quoting Chimel, 395 U.S. at 763).
39 Id. at 460-61 (citation omitted).
located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing, and the like." It is not relevant that a container could hold "neither a weapon nor evidence of the criminal conduct for which the suspect was arrested," for, as in Robinson, authority to search "does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect." In their separate dissents, Justices White and Brennan noted that the Court's approach rendered the locking of a container irrelevant as well. This view has been shared by the lower courts, and appears to be in keeping with the Court's disclaiming any reliance upon an arrestee's expectation of privacy.

Criticism of Belton has been vigorous and sustained. The most basic issue has been whether, as the Court believed, existing law had proven to be so unworkable that it was necessary to forego Chimel's approach in favor of a bright-line rule. Professor Wayne LaFave, among Belton's most persuasive critics, posed the question in 1982 and the discussion continues. The degree of overbreadth inherent in Belton's approach has been another source of concern, and it has also been argued that the Court was too quick to discount the privacy interests involved. The extent to which the police have control over an arrestee and the potential for their intentional manipulation of the situation have also been addressed. As Professor LaFave has observed, it is the very commonplace occurrence during a typical arrest that often renders the justifications for a Belton search factually inapplicable. In addition to being placed in a police car or handcuffed, a defendant will frequently be otherwise restrained beyond the

41 Id. at 460-61 n.4.
42 Id. at 461.
43 Id. (quoting United States v. Robinson, 414 U.S. 218, 235 (1973)).
44 Id. at 472 (White, J., dissenting); id. at 468 (Brennan, J., dissenting).
46 See supra note 34 and accompanying text.
48 LaFave, supra note 47, at 325-26.
49 See Alschuler, supra note 47, at 274-75.
50 See id. at 281.
51 See LAFAVE, SEARCH AND SEIZURE, supra note 47, at 455.
area accessible to the passenger compartment. Thus, the existence of a true factual predicate for *Belton* is often squarely in the hands of the police:

Applying the *Chimel* rationale is in many respects *easier* in automobile cases than in in-premises cases because the police can, and typically do, immediately remove the arrestee from the vehicle. Once that has been done, it is easy to take a next step such as moving him farther from the car, handcuffing him or closing the car door, thus ensuring the nonexistence of circumstances in which the arrestee's "control" of the car is in doubt. In other words, the "difficulty" and "disarray" the *Belton* majority alluded to has been more a product of the police seeing how much they could get away with (by not taking the above-mentioned procedures) than their being confronted with inherently ambiguous situations.52

In light of these issues, it is no surprise that in applying the *Belton* doctrine courts have focused upon those aspects of the holding which define the parameters within which it may be applied. By its terms, *Belton* only authorizes a thorough search of a car's passenger compartment when it is contemporaneous with the arrest.53 In a related vein, while immobilizing a suspect through handcuffing or confinement in a police car has generally been held to have no effect upon the doctrine,54 the removal of an arrestee from the scene entirely is sometimes seen as rendering *Belton* inapplicable.55 These two doctrinal issues, contemporaneousness and general physical proximity, have as a practical matter yielded the most significant judicial limitations upon the application of the federal rule.

*Belton* has clearly had staying power. In January of 2001, in *Florida v. Thomas*,56 the U. S. Supreme Court granted certiorari to consider the question of whether *Belton*’s approach was conditioned upon an officer's initiating contact with an individual while he remained an occupant of a vehicle. Although the Court subsequently dismissed the writ for want of jurisdiction,57 it did so only

52 Id.
53 *Belton*, 453 U.S. at 462.
54 See, e.g., *United States v. Woody*, 55 F.3d 1257, 1269 (7th Cir. 1995); *United States v. White*, 871 F.2d 41, 44 (6th Cir. 1989).
after hearing oral argument. That argument was instructive concerning the continuing vitality of Belton's bright-line approach.

The search in Thomas arose under circumstances in which the defendant had driven onto the driveway of a house in which detectives were already making arrests for narcotics offenses. An officer who was waiting outside in his patrol car saw Thomas leave the vehicle. The officer met him at the rear of the car and, "asked him his name and whether he had a driver's license. A check of Thomas's driver's license revealed an outstanding warrant for a probation violation." The officer arrested Thomas, handcuffed him, and took him into the house. "The officer then went back outside, alone, and searched Thomas' car." The search revealed a plastic bag containing white residue near the driver's side door, and three small bags of a white substance in the glove compartment. All tested positive for methamphetamine. Five minutes elapsed between the time Thomas had left his car and the search. Thomas was charged with possession of the drugs and related offenses, and the trial court granted his motion to suppress the evidence discovered during the search. The Court of Appeal reversed, finding the search permissible under Belton.

The Supreme Court of Florida quashed the decision below. It observed that searches occurring beyond the scope of Belton's intended reach require a case-specific assessment of the presence of Chimel's factors concerning officer safety and the preservation of evidence. The court found the situation before it to be beyond the contemplation of the Supreme Court in Belton. Framing the issue as "whether Belton extends to a situation where the first contact the defendant has with the officer occurs after exiting the vehicle," it endorsed the interpretation of Belton by the U.S. Court of Appeals for the Sixth Circuit in United States v. Hudgins:

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58 The transcript of the oral argument is available at 2001 WL 421613.
59 Thomas v. State, 761 So. 2d 1010, 1010 (Fla. 1999).
60 Id.
61 Id.
62 Id.
63 Thomas, 532 U.S. at 776; Thomas, 761 So. 2d at 1010.
64 Thomas, 761 So. 2d at 1011.
65 Id.
66 Thomas, 532 U.S. at 776.
67 Thomas, 761 So. 2d at 1010.
68 See id. at 1012.
69 See id. at 1013.
70 Id.
71 52 F.3d 115, 119 (6th Cir. 1995).
Our decisions have consistently upheld the search of the passenger compartment of an automobile when the officer initiated contact with the defendant while the defendant was still within the automobile. . . . However, where the defendant has voluntarily exited the automobile and begun walking away from the automobile before the officer has initiated contact with him, the case does not fall within Belton’s bright-line rule, and a case-by-case analysis of the reasonableness of the search under Chimel becomes necessary.\textsuperscript{72}

Thus concluding that Belton was inapplicable, the Supreme Court of Florida remanded for a determination by the trial court of “whether the factors in Chimel justif[ied] the search of Thomas’ vehicle.”\textsuperscript{73}

After the Supreme Court granted certiorari, the parties did not brief the jurisdictional issue,\textsuperscript{74} and oral argument proceeded to the merits of the Belton question. That proceeding was noteworthy for its lack of any implication in the comments of the Justices that Belton’s bright-line approach might be abandoned or significantly modified by the Court. Instead, the questioning by the Justices emphasized how the parameters of the doctrine’s application come into play when its bright-line character is measured against the reasons for a search incident to arrest. The questioning of Petitioner focused principally upon the issues of both temporal and physical proximity of the defendant to the search. Since Thomas was in the house and in the custody of the police at that time, the question of whether he had been removed from the scene was raised:

QUESTION: And do you say that Belton allows the person outside the car to be taken away, secured, removed, and then the officers can go back and search the car?

MR. KRAUSS: Yes, we do, Your Honor, for-

QUESTION: Wasn’t one of the stated objectives of the Belton rule to protect officers from the person connected with the car from reaching in and getting weapons or damaging the officer?

MR. KRAUSS: We would submit, Your Honor, that the ability to effect valid arrest arises at the moment of that arrest. At the time of the arrest, Mr. Thomas was right by the car. Quite frankly-

\textsuperscript{72} Thomas, 761 So. 2d at 1013 (quoting Hudgins, 52 F.3d at 119 (emphasis and citations omitted)).

\textsuperscript{73} Id. at 1014.

\textsuperscript{74} See Thomas, 532 U.S. at 777.
QUESTION: But the search of the vehicle came later. Is there some temporal or spatial limitation to the Belton rule, or do you say there’s [sic] no such limitations?

MR. KRAUSS: No. No, there obviously is a limitation at some point, but certainly this case is not one of them. This was-

QUESTION: This might be, if you take the person away. 75

This overall concern with Belton’s contemporaneousness requirement 76 did not at all suggest that the Justices were reconsidering its basic approach. (While the issue of the Court’s jurisdiction was discussed only briefly, 77 jurisdiction was ultimately found to be lacking because of the Florida Supreme Court’s remand for factfinding and a determination of whether the search was permissible under Chimel 78.) Because of the seemingly entrenched status of Belton, the tenor of the oral argument in Thomas does make it apparent that state constitutional developments will continue to play a central role in the evolution of any critical rethinking of Belton’s assumptions.

III. JURISDICTIONS REJECTING OR MODIFYING BELTON

As would be expected, among those jurisdictions which have declined to adopt Belton’s rule as part of their state constitutional law, a few have rejected it entirely and retained a fact-specific inquiry supported by Chimel’s familiar methodology and justifications. Pennsylvania, New Mexico and Nevada are in this category. The Supreme Court of Louisiana has also made a statement to this effect, but in practice its approach is ambiguous. Other states have chosen to modify the federal approach in significant respects. Washington, New Jersey, Wyoming, Oregon and New York have all developed their own state constitutional doctrines. 79

75 Tr. of Oral Arg. of Petitioner, at 4-5, Florida v. Thomas, 532 U.S. 774 (No. 00-391), available at 2001 WL 421613.

76 See also id. at 5-8, 17-21.

77 See id. at 24-25, 36-37.

78 Thomas, 532 U.S at 778-80. The Court held that the judgment was not final within the meaning of 28 U.S.C. § 1257(a), authorizing the Court to review “[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had . . . .” It did not fall within one of those exceptions in which, for jurisdictional purposes, the Court had treated a state judgment as final while further proceedings were to take place in state court. See id. at 1908-10.

79 States are, of course, free to place statutory restrictions upon searches of vehicles incident to arrest. See, e.g., Commonwealth v. Toole, 448 N.E.2d 1264 (Mass. 1983); State v. Anderson, 910 P.2d 180 (Kan. 1996).
A. Endorsing Chimel’s Fact-Specific Inquiry: Pennsylvania, New Mexico, and Nevada

In 1995, the Supreme Court of Pennsylvania chose to continue to follow relatively recent, pre-Belton doctrine under Article I, Section 8 of the Pennsylvania Constitution and limit the search of an automobile incident to arrest to those areas which might permissibly be examined under a Chimel analysis. In Commonwealth v. White, the defendant was arrested in his car for a drug sale, and was removed from the vehicle. Police partially entered the automobile through the open doors, and noticed a marijuana cigarette on the console. They then opened a brown paper bag which was between the front seats and discovered cocaine. The court framed the issue as whether the warrantless search of the car was permissible in the absence of exigent circumstances “after its occupants have been arrested and are outside the automobile in police custody.” After addressing the insufficiency of the automobile exception to justify the search, the court turned to Belton.

It noted that one year before Belton it had addressed the same issue in Commonwealth v. Timko. There, the arrestee had been driving erratically and was removed from his van after he had reached for a zippered bag and had attempted to flee. Timko was handcuffed outside of the vehicle, and a search of the bag revealed a loaded revolver and marijuana. The Supreme Court of Pennsylvania required that those items be suppressed. In White, the court reiterated that Timko had limited a warrantless automobile search incident to arrest “to areas and clothing immediately accessible to the person arrested.” It added, “the court [in Timko] made it clear that the purpose of this search is to

80 The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.


81 669 A.2d 896 (Pa. 1995).

82 See id. at 898. Accounts differed as to whether the removal was forcible. Id.

83 Id.

84 Id.

85 417 A.2d 620 (Pa. 1980).

86 Id. at 622. The defendant had also struck two vehicles when parking and addressed obscenities at the officers. The officer had also seen boxes marked “shotgun shells” in the car, and had to smash the window of the van in order to remove Timko. Id.

87 Id. at 623.

88 669 A.2d at 902.
prevent the arrestee from securing weapons or destroying contraband.\textsuperscript{89} The court also noted Timko's emphasis upon the applicability of those principles to containers within the vehicle.\textsuperscript{90}

Reviewing the development of Pennsylvania constitutional law during the preceding fifteen years, the court stated:

\begin{quote}
[T]he thrust of Timko is even more compelling today than it was in 1980 because this court has increasingly emphasized the privacy interests inherent in Article I, Section 8 of the Pennsylvania Constitution. . . . By contrast, the United States Supreme Court has deemphasized the privacy interests inherent in the Fourth Amendment. As the Court stated in Belton:

\begin{quote}
[T]he justification for the search is . . . that the lawful custodial arrest justifies the infringement of any privacy interest the arrestee may have.
\end{quote}

As we stated in Commonwealth v. Mason . . . this court, when considering the relative importance of privacy as against securing criminal convictions, has struck a different balance than has the United States Supreme Court, and under the Pennsylvania balance, an individual's privacy interests are given greater deference than under federal law.\textsuperscript{91}
\end{quote}

The court emphasized that, absent an independent exigency such as a need to search for explosives,\textsuperscript{92} Chimel's two justifications of preventing access to weapons and the destruction of evidence permit only the search of the immediate area occupied by the arrestee during his custody.\textsuperscript{93}

The Court of Appeals of New Mexico has also recently confined a search incident to arrest to the actual "reaching" area defined by Chimel. In State v. Arredondo,\textsuperscript{94} the defendant had been the subject of an investigatory stop prompted by the suspicion that he had recently committed an assault with a gun. His car had matched the general description of the assailant's and he had taken evasive action before being stopped. He then responded to the officer's request for information by stating that his license was suspended, he had no insurance,
and he was wanted on warrants. The officer called in and confirmed the suspension of his driver's license. Arredondo was asked to step out of the car and he was frisked. Looking for a weapon, the officer checked the area between the front seats and the adjacent floor, discovering a marijuana cigarette and some rolling papers. The officer spoke briefly with the defendant and then returned to the car to scan the dashboard with his flashlight. Looking into a small hole "about the size of a cigarette lighter" that appeared to have been cut into the dashboard, he saw a plastic bag containing a white powder. The officer retrieved the bag, which was later determined to contain cocaine.

The Court of Appeals found the investigatory stop and the initial search of the car's seating and floor areas to be permissible, as a limited search for weapons. The discovery and seizure of the marijuana and rolling papers were consequently valid. The protective search for weapons could not, however, extend to the "further search of the vehicle and intrusion into the small hole in the vehicle's dashboard[,]" as no weapon may have been retrieved by the defendant from that area. The court found that the officer's motivation was to search for more drug evidence, and it found no exigent circumstances to support that search. It then turned to the question of whether the search of the hole could be justified as incident to an arrest.

The court noted that Belton had established a bright-line rule governing the situation. However, it also observed that the Supreme Court of New Mexico had recently considered the automobile exception under Article II, Section 10 of the New Mexico Constitution and had rejected the federal approach which permitted the warrantless search of a vehicle upon probable cause. In State v. Gomez, the court had determined that a warrantless search of an automobile and its contents required a "particularized showing of exigent circumstances," which had been defined as "an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the

95 Id. at 279.
96 Id.
97 Id. at 280.
98 Id.
99 Id. at 282.
100 Id. at 283.
101 Id. at 283-84; see infra note 104 and accompanying text.
102 The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures, and no warrant to search any place, or seize any person or thing, shall issue without describing the place to be searched, or the persons or things to be seized, nor without a written showing of probable cause, supported by oath or affirmation.
103 N.M. Const. art. II, § 10.
104 932 P.2d 1 (N.M. 1997).
imminent escape of a suspect or destruction of evidence." In Gomez, the court repeatedly described the federal automobile exception as a "bright line" approach, premised upon generalizations about vehicular mobility and diminished expectations of privacy, and held that, instead, "[q]uite simply, if 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." The New Mexico Supreme Court's conclusion was based upon what the court described as New Mexico's "strong preference for warrants."

In Arredondo, the Court of Appeals regarded Gomez as having eschewed bright-line rules and emphasizing the "fact-specific nature" of the reasonableness issue. Accordingly, the court believed that under Article II, Section 10 a fact-specific inquiry was required in defining the legality of a search of an automobile incident to arrest. As nothing indicated that the small hole in the dashboard was in fact under the defendant's immediate control, its examination was illegal.

The Supreme Court of Nevada has reached a similar conclusion. In State v. Greenwald, the court discussed the issue, but its twofold objection to the search left that opinion open to the interpretation that the search's invalidity may have been due to a lack of contemporaneousness with the arrest. A subsequent observation by the court in State v. Harnisch does, however, make it clear that Belton has been rejected in Nevada. Greenwald involved the arrest of a motorcyclist for traffic infractions. The defendant was handcuffed and placed in a police car, and the motorcycle was thoroughly searched from front to rear. The trooper examined the con-

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104 Id. at 12 (quoting State v. Copeland, 727 P.2d 1342, 1346 (N.M. Ct. App. 1986)).
105 See id. at 10, 13.
106 Id. at 11.
107 Id. at 13 (emphasis in original).
109 944 P.2d at 284.
110 Id.
111 858 P.2d 36 (Nev. 1993).
113 858 P.2d at 37.
114 Id.
tents of the gas and oil tanks, buckled saddlebags, and even a flashlight. The saddlebag search revealed a firearm, a holster, a cartridge clip, and several "hits" of LSD. The court stated that it was hard "to escape the conclusion that the trooper was searching for contraband," adding:

Quite obviously the officer in this case was not making a search incident to Greenwald's arrest, as the search was made some time after the arrest and at a time that Greenwald was well secured in a police vehicle. As the State points out in its opening brief . . . the authority to search incident to arrest derives from the need to disarm and prevent any evidence from being concealed or destroyed. With Greenwald safely locked away in a police car, there was no conceivable "need" to disarm him or prevent him from concealing or destroying evidence; so we leave this point.

Dictum by the court in Harnisch indicates that the placing of Greenwald in the police car had rendered the search invalid. In Harnisch, the trunk of the defendant's car had been examined, and the court noted that the search was not valid incident to arrest. In support of this conclusion, it added, citing Greenwald, that "[b]ecause Harnisch was in custody at the time of the search of the car, there was no 'need' to disarm him or prevent him from concealing or destroying evidence." A similar reference to Greenwald in Rice v. State echoes this interpretation.

B. Conflicting Signals: Louisiana

The most ambivalent rejection of Belton may have occurred in Louisiana, where an unequivocal statement in strongly-worded dictum by the Supreme Court in 1982 appears to have been undermined by subsequent holdings. In that dictum in State v. Hernandez, the court squarely disapproved of Belton's view and endorsed the Chimel approach under Article I, Section 5 of the Louisiana Constitution. As the court stated, Belton was inapplicable to

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115 Id.
116 Id.
117 931 P.2d at 1365.
118 Id. at 1366.
120 Id. at 322.
121 410 So. 2d 1381, 1384-85 (La. 1982).
122 Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of pri-
the case, since the automobile was not searched contemporaneously with defendant's arrest and he had in fact been taken to the police station. Nevertheless, the court observed:

Although the Belton case is distinguishable and therefore inapplicable here, it should be noted that we do not consider it to be a correct rule of police conduct under our state constitution. . . . Our state constitution's declaration of the right to privacy contains an affirmative establishment of a right of privacy, explicit protections against unreasonable searches, seizures or invasions of property and communications, as well as houses, papers and effects, and gives standing to any person adversely affected by a violation of these safeguards to raise the illegality in the courts. . . . This constitutional declaration of right is not a duplicate of the Fourth Amendment or merely coextensive with it; it is one of the most conspicuous instances in which our citizens have chosen a higher standard of individual liberty than that afforded by the jurisprudence interpreting the federal constitution. . . . For these reasons we adhere to our well-settled rule in construing our state constitution: when a custodial arrest is made, because of the danger that the person arrested may seek to use a weapon or that evidence may be concealed or destroyed, the arresting officer may, to safeguard himself and others and to prevent the loss of evidence, conduct a prompt, warrantless search of the arrestee's person and the area within his control—construing that phrase to mean the area from within which he could gain possession of a weapon or destructible evidence.

In that same year, however, the Supreme Court of Louisiana rendered an apparently conflicting opinion which reflected an endorsement of Belton's approach. In State v. Drott, defendant, a private security guard, had been the subject of an investigation of a series of thefts. He was stopped while driving

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vacy. No warrant shall issue without probable cause supported by oath or affirmation, and particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court.

LA. CONST. art. I, § 5.

123 410 So. 2d at 1384.

124 Id. at 1385 (citations omitted).

125 412 So. 2d 984 (La. 1982).

126 Id. at 985.
his truck, and was asked to step out of the vehicle. Within a minute of the stop, the officer observed a five dollar bill sticking out from the crack between the back and bottom of the driver's seat. He retrieved the bill, and two twenty dollar bills came out as well. A further search revealed several hundred dollars in cash, bearing serial numbers which had been recorded by the crime victim during the investigation. Finding that Drott had been lawfully arrested at the time of the stop, the court discussed whether the search was permissible incident to the arrest. It held:

The search incident to arrest is limited to the area within the arrestee's immediate control. . . . It is permissible to search the interior of an automobile after arresting its occupants when they remain in proximity to the vehicle.

In the recent U.S. Supreme Court case of New York v. Belton, . . . the court clearly set forth the permissible limits of the warrantless search of an automobile following the arrest of one of its occupants:

“Accordingly, we hold that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment . . . .”

The search was upheld, although Justice Dennis would have granted a rehearing to consider the state constitutional issue in light of Hernandez. Hernandez was not mentioned in the opinion of the court.

Since Drott, Louisiana's Court of Appeal for the Fourth Circuit has noted the existence of an apparent conflict between Hernandez and Drott concerning the applicability of Belton under the Louisiana Constitution. In State v. Wilson, the arresting officer's observation of a weapon in the automobile distinguished the situation from a typical search incident to arrest. Nevertheless, the court validated it under the latter rationale, and held that, despite his handcuffing at the rear of the vehicle, Wilson was in sufficient "proximity" to his car.

127 Id. at 986.
128 Id.
129 Id.
130 Id.
131 Id. at 987.
132 Id. at 986 (quoting Belton, 453 U.S. at 460).
134 457 So. 2d at 76.
to distinguish the facts of Hernandez.\textsuperscript{135} It added that despite its differentiating of Hernandez, "[p]erhaps the apparent conflict between Hernandez and Drott, \textit{vis a vis} the Belton standard of vehicle searches incident to arrests, may be resolved by the Louisiana Supreme Court in the appropriate case."\textsuperscript{136}

That court has not done so. Instead, the dictum of Hernandez is seemingly regarded by lower courts as applicable when a defendant has been removed from the scene.\textsuperscript{137} The recent holding in \textit{State v. Freeman},\textsuperscript{138} in which the search was upheld as incident to arrest when a defendant was secured by handcuffs in a police car, illustrates the apparent acceptance of Belton.\textsuperscript{139} As one Court of Appeal has noted, "[d]espite the restrictive language of Hernandez, it does not have a blanket application to all Louisiana cases which deal with automobile searches incident to custodial arrests. The Louisiana Supreme Court has, both prior and subsequent to Hernandez, either generally applied or at least cited with approval Belton."\textsuperscript{140}

\section*{C. Accommodating Privacy Interests: Washington}

In \textit{State v. Stroud},\textsuperscript{141} focusing upon the privacy interests protected by the Washington Constitution, a four-justice plurality of the state Supreme Court endorsed the bright-line quality of Belton's approach, but modified its reach.\textsuperscript{142} The reasoning of that plurality opinion has since been followed.\textsuperscript{143} \textit{Stroud} involved the arrest of two defendants for the theft of vending machine proceeds. At the time of the arrest, they were standing outside of their vehicle, and they were placed in a patrol car.\textsuperscript{144} The officer then looked in the defendant's car and saw a revolver on the back seat. He seized the weapon and conducted a search of the passenger compartment. An unzipped luggage bag was found to contain a sawed off shotgun, ammunition for that weapon, and a container containing a white powder. The unlocked glove compartment contained spoons, syringes, and a container full of a clear liquid.\textsuperscript{145} A residue in the spoons was later identi-
fied as heroin and methamphetamine, and the two were convicted of possession of the drugs and being felons in possession of a firearm. The plurality opinion addressed the question of the legality of the search incident to the defendants' arrest in the context of what is deemed part of the "automobile exception" to the warrant requirement implied in Article 1, Section 7 of the Washington Constitution. Its analysis squarely presented the issue of whether the approach of Belton commended itself under that provision.

The Supreme Court of Washington had addressed the question of a search incident to arrest only two years earlier in State v. Ringer. There, after an extensive historical analysis, the court had held that the two traditional justifications for a search incident to arrest - preventing access to weapons and the destruction of evidence - required a case-by-case, Chimel-like assessment of the exigencies of a situation before a warrantless search. In Ringer, as the defendant was in a patrol car and his vehicle was immobilized, the search was improper. Stroud afforded the court an opportunity to reexamine that earlier approach, and the plurality opinion is as striking for its rejection of Ringer as it is for its modification of Belton.

The Stroud plurality began its analysis by noting that, because of its belief that the Washington Constitution affords greater protection against warrantless searches than does the Fourth Amendment, it declined simply to follow federal precedent. This conclusion was based upon a number of factors. First, the framers of Article 1, Section 7 had rejected a provision identical to the federal provision, adopting instead language stating that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.' The plurality observed that "[t]his provision, unlike any provision in the federal constitution, explicitly protects the privacy rights of Washington citizens, . . .

146 Id. at 438.
147 Id.
148 Id.
149 674 P.2d 1240 (Wash. 1983).
150 Id. at 1248; see Stroud, 720 P.2d at 440.
151 674 P.2d at 1248.
153 WASH. CONST. art. 1, § 7, quoted in Stroud, 720 P.2d at 439.
and these privacy rights include the freedom from warrantless searches absent special circumstances.\textsuperscript{154}

Secondly, the Washington Supreme Court's recent interpretations of the state constitution in search and seizure cases had protected the privacy rights of Washington citizens more than would have been the case under federal doctrine.\textsuperscript{155} The plurality added, "During a period in which the federal interpretation more carefully limits an individual's privacy rights, we decline to follow the federal lead as our state constitution provides specific additional guarantees of a right to privacy."\textsuperscript{156}

The plurality concluded, however, that although its independent interpretation of Article 1, Section 7 was more protective than federal law, the search of the defendants' car was lawful.\textsuperscript{157} It then expressly rejected that portion of \textit{Ringer} which had employed a fact-specific approach.

We cannot agree with all of the reasoning used in \textit{Ringer}. . . . The \textit{Ringer} holding makes it virtually impossible for officers to decide whether or not a warrantless search would be permissible. Weighing the "totality of circumstances" is too much of a burden to put on police officers who must make a decision to search with little more than a moment's reflection. . . .

We agree with the Supreme Court's decision [in \textit{Belton}] to draw a clearer line to aid police enforcement, although because of our state's additional protection of privacy rights we must draw the line differently than did the United States Supreme Court.\textsuperscript{158}

The opinion regarded the dual purposes for a \textit{Belton} search as significant (as well as the exigency permitting the search of a car's trunk upon probable cause), but added, "because of our heightened privacy protection, we do not believe that these exigencies always allow a search. Rather, these exigencies must be balanced against whatever privacy interests the individual has in the articles in the car."\textsuperscript{159}

\textsuperscript{154} \textit{Stroud}, 720 P.2d at 439 (citing \textit{State v. White}, 640 P.2d 1061 (Wash. 1982)).


\textsuperscript{156} \textit{Stroud}, 720 P.2d at 439.

\textsuperscript{157} \textit{Id.} at 440.

\textsuperscript{158} \textit{Id.}.

\textsuperscript{159} \textit{Id.}.
The plurality recalled that the court had recognized that under the
Washington Constitution a person has a legitimate expectation of privacy in a
vehicle he or she possesses.\textsuperscript{160} This had been extended to a non-visible vehicle
identification number, and must also be true "of articles within the vehicle
which are also not visible because, for example, they are in a suitcase or the
glove compartment."\textsuperscript{161} The court had also held earlier that "the act of locking a
car 'manifests a subjective expectation of privacy which is objectively justifi-
able[.]'\textsuperscript{162} The plurality added, "Thus additional privacy expectations must also
result from locking articles within a container."\textsuperscript{163}

The plurality concluded that a reasonable balance could be struck be-
tween the protection of individual privacy interests and the need for effective
law enforcement. Accordingly, during an arrest, "including the time immedi-
ately subsequent to the suspect's being arrested, handcuffed, and placed in a
patrol car," police are permitted to search a vehicle's passenger compartment.\textsuperscript{164}
"However, if the officers encounter a locked container or locked glove com-
partment, they may not unlock and search either container without obtaining a
warrant."\textsuperscript{165} The plurality continued:

The rationale for this is twofold. First, by locking the container,
the individual has shown that he or she reasonably expects the
contents to remain private. . . . Secondly, the danger that the in-
dividual either could destroy or hide evidence located within the
container or grab a weapon is minimized. The individual would
have to spend time unlocking the container, during which time
the officers have an opportunity to prevent the individual's ac-
cess to the contents of the container. This rule will more ade-
quately address the needs of officers and privacy interests of in-
dividuals than the rules set forth by either \textit{Belton} or \textit{Ringer}.\textsuperscript{166}

Since \textit{Stroud}, the Washington Supreme Court has continued to fine-tune
the scope of searches incident to arrest in accordance with the privacy interests
guaranteed under the Washington Constitution. In 1999, in \textit{State v. Parker},\textsuperscript{167} a
four-justice plurality stated that the arrest of a vehicle's occupant does not, by

\begin{flushleft}
\textsuperscript{160} \textit{Stroud}, 720 P.2d at 441.
\textsuperscript{161} \textit{Id.}
\textsuperscript{162} \textit{Id.} (quoting \textit{State v. Simpson}, 622 P.2d 1199, 1210 (Wash. 1980)).
\textsuperscript{163} \textit{Id.}
\textsuperscript{164} \textit{Id.}
\textsuperscript{165} \textit{Id.}
\textsuperscript{166} \textit{Id.} (citation omitted).
\textsuperscript{167} 987 P.2d 73 (Wash. 1999).
\end{flushleft}
itself, provide "authority of law" under Article 1, Section 7 to search a non-arrested occupant or personal belongings clearly associated with him or her.\textsuperscript{168} A fifth justice, Justice Alexander, concurred with that principle.\textsuperscript{169} The plurality stated that this result was mandated by the privacy interests of the nonarrested individual,\textsuperscript{170} which "is independent . . ., and is not diminished merely upon stepping into an automobile with others."\textsuperscript{171} The plurality endorsed the standard for evaluating containers which had been set forth by the Wyoming Supreme Court in \textit{Houghton v. State}\textsuperscript{172} in the context of examining a search of a vehicle upon probable cause. Under that approach, police may assume that all containers may be searched unless they "\textit{know or should know} that the container is the personal effect of a passenger who is not independently suspected of criminal activity and where there is no reason to believe contraband is concealed in the personal effect immediately prior to the search."\textsuperscript{173} The plurality expressly disagreed with the U.S. Supreme Court's rejection of the Wyoming test.\textsuperscript{174} Justice Alexander, while agreeing with the conclusion that knowledge of a passenger's ownership precludes a search incident to the arrest of the driver, disagreed "that the officers should be similarly inhibited if they merely 'should know.'"\textsuperscript{175} He believed that feature of the \textit{Houghton} test injected a subjective standard which ran "counter to the rationale" of \textit{Stroud}.\textsuperscript{176}

\textsuperscript{168} \textit{Id.} at 83. A similar state constitutional argument was raised before the Supreme Court of North Dakota in \textit{State v. Gilberts}, 497 N.W.2d 93, 95 (N.D. 1993), but the state argument was not separately discussed in the opinion. The court stated that \textit{Belton}’s rationale foreclosed the search of a jacket belonging to a non-arrested passenger. \textit{Id.} at 97.

\textsuperscript{169} \textit{Parker}, 987 P.2d at 90 (Alexander, J., concurring in part, dissenting in part).

\textsuperscript{170} \textit{Id.} at 81-83.

\textsuperscript{171} \textit{Id.} at 83 n.7. The plurality stated:

\begin{quote}
[\textit{W}hile we have recognized in the context of an automobile stop that nonsuspect companions may pose a danger to officers, a generalized concern for officer safety has never justified a full search of nonarrested companions. Even in the context of an automobile stop, when a person is not under arrest the scope of any search of such individual is limited to ensure officer safety only and must be supported by objective suspicions that the person searched may be armed or dangerous. \textit{Id.} at 82 (citation omitted).
\end{quote}


\textsuperscript{173} \textit{Parker}, 987 P.2d at 83.

\textsuperscript{174} \textit{See id.} at 83 n.7.

\textsuperscript{175} \textit{See id.} at 90 (Alexander, J., concurring in part, dissenting in part).

\textsuperscript{176} \textit{See id.}
D. Limiting the Predicate Offense: New Jersey

In *State v. Pierce*, the Supreme Court of New Jersey held that the Belton doctrine is inapplicable under Article I, paragraph 7 of the New Jersey Constitution when an individual has been arrested for a traffic offense. Although the parameters of this classification were not clearly specified in the opinion, the court found the justifications for the search less compelling in the context of "a routine violation of . . . [a] motor vehicle [statute]." In an interesting passage, the court observed "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.'" New Jersey courts have not extended Pierce's limitation to any other category of arrests.

Eileen Pierce had been one of two passengers in a van whose driver, Nicholas Grass, had been stopped for speeding and arrested for driving with a suspended driver's license. The arrestee was handcuffed and placed in a patrol car, and Pierce and the male passenger, Bernardo, were asked to leave the vehicle. They were patted down and no weapons were discovered. When asked for identification, Pierce stated that she had none. Three officers were on the scene, and Pierce and Bernardo were "secured . . . behind the van" while an officer entered the vehicle. That officer saw a large, "hunting-type" knife on the front console. He found a latched metal camera case behind the driver's seat, and inside he found a revolver, "four loaded rounds of .357 magnum ammunition," and "two spent rounds." Inside the van the officer also found "two breed member motorcycle gang jackets" and a companion jacket which appeared to be a woman's, bearing a patch that said "Nick's property." In the pocket of that jacket the officer found a cellophane packet containing a trace

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178 The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.

N.J. CONST. art. 1, par. 7.

179 *Pierce*, 642 A.2d at 960.

180 *Id.* at 961 (quoting 3 LAFAVE, SEARCH AND SEIZURE, supra note 47, at 21).


182 *See Pierce*, 642 A.2d at 948.

183 *Id.*

184 *Id.*

185 *Id.*
amount of a white powder, later determined to be cocaine. The three were indicted for possession of the weapon without a permit, receiving stolen property (the revolver), and possession of the cocaine. After the denial of Pierce’s motion to suppress the evidence, she pleaded guilty to the drug offense.

The New Jersey Supreme Court found the arrest of Grass to be statutorily authorized and constitutionally valid. Turning to Belton, it stated that it had not before considered the applicability of Belton’s approach in the context of the state’s constitutional law. The only issue before it was the appropriateness of Belton in the context of “warrantless arrests for motor-vehicle offenses.” The court noted that on several prior occasions it had held that Article I, paragraph 7 afforded greater protections against unreasonable searches and seizures than did the federal Constitution. It added, “That body of decisional law reflects a steadily-evolving commitment by our State courts to provide enhanced protection for our citizens against encroachment of their right to be free from unreasonable searches and seizures.” That commitment “fortify[d]” the court’s conviction that it should not apply the rule of Belton for a motor vehicle violation.

The court emphasized that the twofold rationale underlying Chimel is significantly diminished when the basis for the arrest is a routine violation of a motor vehicle statute.

We are mindful that police officers are at risk whenever they make a vehicular stop, and that a significant percentage of assaults on police officers occur in the course of traffic stops.

186 Id.
187 See id. at 948-49. The charges against Bernardo were dismissed, and Grass pleaded guilty to possession of the handgun without a permit. See id. at 949.
188 See id. at 949-52, 958-59.
189 See id. at 958.
190 See id. at 960. One commentator has described Pierce’s reluctance to address Belton in a non-traffic setting as “very disturbing from a police trainer’s perspective.” Ronald Susswein, The Practical Effect of the “New Federalism” on Police Conduct in New Jersey, 7 SETON HALL CONST. L.J. 859, 870 (1997).
192 See Pierce, 642 A.2d at 960.
193 See id.
Nevertheless, out of the substantial number of ordinary citizens who might on occasion commit commonplace traffic offenses, the vast majority are unarmed. Moreover, when the predicate offense is a motor-vehicle violation, the vehicle stopped by police would not ordinarily contain evidence at risk of destruction that pertains to the underlying offense, except in the case of violations of N.J.S.A. 39:4-50 (driving while intoxicated) and N.J.S.A. 39:4-49.1 (operating vehicle while possessing controlled dangerous substances). In addition, motorists arrested for traffic offenses almost invariably are removed from the vehicle and secured.\textsuperscript{194}

This had been the case with Grass and his passengers, and in that situation the officers' justification for searching the vehicle was regarded as minimal.\textsuperscript{195} "Thus, in the context of arrests for motor-vehicle violations, the bright-line Belton holding extends the Chimel rule beyond the logical limits of its principle."\textsuperscript{196}

At this point, the court discussed its additional concern, noted above,\textsuperscript{197} about pretextual traffic arrests.\textsuperscript{198} The court stated that its holding posed no obstacle to the ability of the police to take precautions necessary for their safety. A search of the person of the arrestee remained permissible, as was a warrantless search of the vehicle upon probable cause under the automobile exception.\textsuperscript{199} Similarly, the doctrine of Michigan v. Long\textsuperscript{200} remained undisturbed, permitting a weapons search of the vehicle when officers possess a reasonable belief that a vehicle's driver or occupants pose a threat to their safety.\textsuperscript{201} Finally, if a traffic law violator remained in actual proximity to his or her vehicle, a Chimel search remained available.\textsuperscript{202} The court concluded by stating that

\textsuperscript{194} Id. (citation omitted).
\textsuperscript{195} See id.
\textsuperscript{196} Id.
\textsuperscript{197} See supra note 180 and accompanying text.
\textsuperscript{198} See Pierce, 642 A.2d at 961-62.
\textsuperscript{199} See id. at 962.
\textsuperscript{200} 463 U.S. 1032 (1983).
\textsuperscript{201} See Pierce, 642 A.2d at 962-63.
\textsuperscript{202} Id. at 963. Critical commentary concerning the efficacy of Pierce has varied. Compare Jon F. Sheehan, Comment, State v. Pierce: State Constitutional Protection Against the Belton Search Incident to Arrest Rule, 30 New Eng. L. Rev. 843, 879 (1996) (anticipating no hindrance to law enforcement), with Susswein, supra note 190, at 870 (citing ambiguity in enforcement of drunk driving laws). As to the difficulty of weighing the "intangible values" of privacy and autonomy, see Eric Neisser, Seizing on the New Jersey Constitution to Protect Privacy, 185 N.J. Law. 24, 27 (June 1997).
while it acknowledged the virtue of simple, straightforward rules to guide the police:

[W]e are convinced that automatic application of the Belton bright-line rule to authorize vehicular searches incident to all traffic arrests poses too great a threat to rights guaranteed to New Jersey's citizens by their State Constitution, and that that threat to fundamental rights outweighs any incidental benefit that might accrue to law enforcement because of the simplicity and predictability of the Belton rule.

E. Augmenting the Justifications of Chimel: Wyoming and Oregon

In 1999, the Supreme Court of Wyoming expressly rejected Belton's bright-line approach, adding to its discussion of Wyoming's fact-specific inquiry a justification for the search which augmented Chimel's twofold rationale. In Vasquez v. State, the defendant was arrested for driving his pickup truck while intoxicated. After his arrest, he was handcuffed and placed in a patrol car while two passengers remained in his vehicle. Officers then noticed empty bullet casings in the truck bed and in the passenger compartment. The passengers were removed from the truck, handcuffed, and asked to kneel on the ground some distance from the vehicle. They were searched for weapons and none were found. An officer then opened a fuse box located on the left side of the steering wheel, and found a plastic bag containing a white substance later determined to be cocaine. The officer testified that he had believed the fuse box to be an ashtray large enough to contain a pistol. Vasquez was charged with possession of the drugs, and his motion to suppress the evidence was denied. He then entered a conditional guilty plea to that charge.

Turning to the issue of whether the search of the fuse box might be justified as incident to Vasquez's arrest, the court stated that Belton had "virtually eliminat[ed]" the "'area of control' analysis from searches incident to arrest."

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200 Pierce, 642 A.2d at 963.
204 990 P.2d 476 (Wyo. 1999).
205 Id. at 479.
206 Id. at 479-80.
207 Id. at 479.
208 Id.
209 Id. at 479-80. He also unsuccessfully moved to suppress incriminating statements. Id. at 479.
210 Id. at 480.
211 Id. at 481-82 (footnote omitted).
That decision, coupled with recent federal analyses concerning the automobile exception "has simplified Fourth Amendment law regarding automobiles, effectively prohibiting only general searches and essentially eliminating the individual's right to the constitutional protection of a judicially-issued warrant for almost all automobile searches."\(^{212}\) The court acknowledged that in 1982 it had applied Belton in Lopez v. State,\(^{213}\) but it had not then considered if Belton should apply under Article I, Section 4 of the Wyoming Constitution.\(^{214}\)

The court began its analysis by stating that the texts of the Constitution of Wyoming and the Fourth Amendment were substantially similar,\(^{215}\) and that the state's recent constitutional jurisprudence "has not distinguished between the two provisions."\(^{216}\) It added that little state constitutional history was available to indicate the framers' intent.\(^{217}\) While textual differences between the state and federal constitutions overall were not instructive,\(^{218}\) the court stated that the Wyoming Constitution "is a unique document, the supreme law of our state, and this is sufficient reason to decide that it should be at issue whenever an individual believes a constitutionally guaranteed right has been violated."\(^{219}\) The court adopted a "primacy" approach to state constitutional interpretation, under which it would address a state constitutional issue before proceeding to the federal issue.\(^{220}\)

The court found the search of Vasquez's truck to be lawful under the Wyoming Constitution.\(^{221}\) Reviewing its earlier holdings, the court then stated:

\(^{212}\) Id. at 482 (footnote omitted).

\(^{213}\) 643 P.2d 682 (Wyo. 1982).

\(^{214}\) The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause, supported by affidavit, particularly describing the place to be searched or the person or thing to be seized.


\(^{215}\) Vasquez, 990 P.2d at 482-83. The Wyoming provision does require an affidavit to obtain a warrant. WYO. CONST. art. I, § 4.

\(^{216}\) Vasquez, 990 P.2d at 483.

\(^{217}\) Id.

\(^{218}\) Id. at 485.

\(^{219}\) Id.


\(^{221}\) Vasquez, 990 P.2d at 488.
in broad language, seemingly applicable to a search incident to arrest which seeks evidence that is not in fact in danger of destruction:

These past decisions establish that Article I, § 4 allows searches incident to arrest and can be said to allow automobile searches because arrestees had possession of it, and the arrest authorizes law enforcement to search it for evidence related to the crime. . . . The provision requires, however, that searches be reasonable under all of the circumstances . . . .

In the case of Vasquez, his erratic driving permitted an investigatory stop, and the strong smell of alcohol and failure of field sobriety tests authorized an arrest for driving under the influence based upon probable cause . . . . The characteristics of a driving under the influence arrest for suspected alcohol intoxication permit a search of the passenger compartment of the vehicle for any intoxicant, alcohol or narcotic, as evidence related to the crime while driving under the influence.222

An earlier statement in the opinion reinforces the notion that, in addition to preventing accessibility to weapons and the destruction of evidence, a search incident to arrest may in the court's view be based upon a desire to obtain evidence which is relevant to the arrestee's offense, even though it is not in danger of being destroyed.223 Discussing what it perceived to be the approach of jurisdictions rejecting Belton, the court stated that "[t]hose courts . . . generally agree that the search incident to arrest exception is permitted when required for the protection of the officer, the preservation of evidence, or when it is relevant to the crime for which defendant is being arrested and is reasonable in light of all the facts."224

Under the facts of Vasquez, the court added that the discovery of shell casings and presence of two passengers presented "an officer safety and public safety concern" which permitted a search incident to arrest although Vasquez was secure in a patrol car.225 Summing up its approach, the court stated:

In this particular case, we believe that the arrest justified a search of the passenger compartment of the vehicle and all containers in it, open or closed, locked or unlocked, for evidence

223 Id. at 483.
224 Id. (emphasis added). The court's reference to Chimel's two justifications in a subsequent portion of its discussion creates some puzzling ambiguity on this point. See id. at 489.
225 Id. at 489.
related to the crime and for weapons or contraband which presented an officer or a public safety concern.

Is this result a narrower application than Belton? We think so. This result eschews a bright-line rule and maintains a standard that requires a search be reasonable under all of the circumstances as determined by the judiciary, in light of the historical intent of our search and seizure provision . . . . It will not be common that a search of an automobile incident to arrest will violate that provision, and our decision should not raise new concerns for law enforcement.226

To the extent that Vasquez authorized a vehicular search for non-destructible evidence in the context of a fact-specific inquiry, its approach paralleled a development which had occurred in Oregon's intermediate appellate courts as they interpreted Article I, Section 9 of the Oregon Constitution. State v. Fesler,227 an in banc opinion decided by the Court of Appeals in 1984, provides a clear example of that development.

Fesler was arrested for driving while his license was suspended and for giving a false name to an officer. Before his arrest, he had failed to provide the police with identification in the name which he claimed as his and had then admitted his true identity to be different. He was frisked after the arrest and the police did not discover a weapon, wallet, or valid identification. The officer placed him in a police car.228 Then, both at Fesler's request and as a matter of routine procedure, the officer went to lock the car. As the court put it, "Before locking the car, he searched the interior for identification."229 When the officer lifted a vest which had been on the back seat, two bags of marijuana fell out of a pocket. Fesler was convicted for possession of a controlled substance.230

Addressing the question of whether the search was permissible as incident to the arrest, the court viewed language of the Oregon Supreme Court in a non-vehicular case, State v. Caraher,231 as disapproving of Belton's approach under state constitutional law.

The . . . court [in Caraher] chose not to adopt such a "bright line" approach . . . and we believe that it will continue to evalu-

226 Id. (citation omitted).
228 Id. at 1016.
229 Id.
230 Id.
231 653 P.2d 942, 945-46 (Or. 1982). Caraher had upheld, as incident to an arrest, the opening of a purse and the coin compartment of a wallet within it. Id. at 952.
ate the reasonableness of each search incident to arrest on its particular facts rather than attempt to draw a "bright line." In Oregon, a search incident to arrest does not require probable cause beyond the basis for the arrest itself. It must, however, be reasonable in scope and, when it is not for the purpose of protecting the officer's safety or preventing the destruction of evidence, it must be related to the crime for which the defendant was arrested.232

The Court of Appeals observed that in the case before it there was "no suggestion . . . that the search of the car was occasioned by a desire to protect the officers' safety or to prevent the destruction of evidence."233 The question remained whether the police had the right to look for "evidence of the offenses for which defendant was arrested."234 The court held that they did. It stated that while evidence of those crimes, driving with a suspended license and giving a false identity, "is not generally the kind to be found lying around or hidden just any place," it was reasonable to conduct the search following Fesler's arrest.235 As he had given a false name and false identification and had persisted in that falsehood until confronted with the results of an investigation, the court held:

[I]t was reasonable to search for defendant's wallet and the identification it could be expected to contain. Such a search would relate to the offense for which defendant was arrested in two ways: it would further serve to identify defendant and, because defendant's knowledge he was suspended may be a pertinent consideration in such cases, it would further tend to show defendant's consciousness of guilt if the wallet had been hidden. We hold that a search of the kind conducted here meets Caraher's requirement that it be for evidence of the offense for which defendant is under arrest.236

The Oregon doctrine is not without its limits. In State v. Brody,237 the Court of Appeals emphasized that under the requirements of the Oregon Constitution, "[a] search incident to arrest, if it is not necessary for the protec-

232 Fesler, 685 P.2d at 1016-17 (citations omitted).
233 Id. at 1017.
234 Id.
235 Id.
tation of the officer or the preservation of evidence . . . must be related to the crime for which the person was arrested and must be reasonable in scope, time and intensity." In *Brody*, a trooper observed the defendant's erratic driving of his pickup truck, and pulled behind it as the defendant parked in front of a restaurant. Brody, the vehicle's sole occupant, was stopped as he left the truck, and the trooper smelled the odor of marijuana "coming from defendant's person, his clothing and the inside of the cab." He also detected an odor of alcohol on Brody's breath. Approaching the truck, the trooper saw in the truck's ashtray a small, burning marijuana cigarette held by a pair of forceps.

The trooper asked Brody for identification, and while Brody searched for it the officer went to his patrol car for a tape recorder. When he returned, Brody produced his driver's license but the marijuana and forceps were gone. The trooper read Brody his *Miranda* warnings, administered field sobriety tests, and arrested him for driving under the influence of intoxicants (DUII). He then asked Brody to retrieve the marijuana cigarette and forceps, which Brody produced from under the seat. Defendant was then handcuffed and placed in the back of the patrol car.

The trooper, assisted by another officer, then searched the cab of the truck. He first examined an unzipped leather attaché case which was on the seat next to the driver. It had no bulges or odor attracting any special attention. Looking down into it, the trooper saw a fruit can lid with marijuana, seeds and cigarette papers lying in it. A search of the glove compartment revealed black capsules (which did not result in any later prosecution), and behind the seat the trooper found a scale and a white plastic bag containing more marijuana. The state did not argue that the discovery of the marijuana in the attaché case gave the officers probable cause to arrest for felony possession of marijuana.

The court held that the marijuana cigarette and the contents of the attaché case were admissible, but the remaining search was invalid. *Brody* had been arrested for driving under the influence of intoxicants, and the trooper reasonably believed that one intoxicant involved was marijuana. The cigarette, in addition to being contraband, was evidence of the crime for which the defendant

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238 *Id.* at 453.
239 *Id.* at 452.
240 *Id.*
241 *Id.*
242 *Brody*, 686 P.2d at 452.
243 *Id.*
244 *Id.*
245 *Id.*
246 *Id.*
247 *Id.* at 453. The forceps were not discussed. See *id.*
had been arrested. Since he had attempted to hide it under the seat, it was reasonable for the officers to believe that they would find more evidence of driving under the influence of intoxicants in the cab, "and a limited search incident to the arrest for that evidence was reasonable." The search that occurred was not, however, "appropriately limited in scope and intensity." The Court of Appeals stated that in determining whether the intensity of a search is reasonable, it may consider "the nature of the offense and the character of the offender as it was known to the police making the search." Here the arrest had occurred for driving under the influence of intoxicants. That justified the seizure of the marijuana cigarette and the search of the open attaché case.

However, what took place after the search of the case was "unreasonable exploring, rummaging or ransacking," at least when the sole justification is the arrest for that offense. Although DUII is a serious traffic offense, it is still only that—a traffic offense. A full search of the passenger compartment of a vehicle and the closed containers in it is not reasonable as incident to a DUII arrest even when, as here, the officer also discovers small amounts of intoxicants. The "extended search" violated Article I, Section 9 of the Oregon Constitution.

\[ \text{F. Emphasizing the Interplay Between Belton and the Automobile Exception: New York} \]

New York has developed a doctrine that addresses the factual interplay between a search incident to arrest and an "automobile exception" search upon probable cause under Article I, Section 12 of the New York Constitution. A leading case in the area, \textit{People v. Blasich}, involved both New York's treatment of the federal approach to a search incident to arrest, and New York's

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248 \textit{Brody}, 686 P.2d at 452.

249 \textit{Id.}

250 \textit{Id.}

251 \textit{Id.}

252 \textit{Id.} (quoting State v. Chinn, 373 P.2d 392, 396 (Or. 1962)).

253 \textit{Id.} In contrast, in \textit{State v. Augard}, 858 P.2d 463 (Or. Ct. App. 1993), the Court of Appeals distinguished \textit{Brody} and found a search of a glove compartment after a DUII arrest to be reasonable in scope and intensity. The court found that the officer had "articulated a clear reason" why she conducted that search. "She had not found any open containers around the driver's seat and noted that the compartment 'is about the right size if you want to hide a can of beer or actually a fifth of whiskey or a small bottle of whiskey.'" \textit{Id.} at 465 n.6.

“nexus” requirement when the circumstances surrounding an arrest also provide the basis for probable cause concerning the vehicle. With regard to a search incident to arrest, the Court of Appeals stated:

This court has not adopted [New York v. Belton’s] bright-line approach to automobile searches incident to arrest as a matter of State constitutional law. We have noted, instead, that the search-incident-to-arrest exception to the warrant and probable cause requirements of our State Constitution . . . exists only to protect against the danger that an arrestee may gain access to a weapon or may be able to destroy or conceal critical evidence. Thus, we have held that the scope of such a search must be limited to the arrestee’s person and the area from within which he might gain possession of a weapon or destructible evidence.\(^\text{255}\)

Thus, New York clearly follows a fact-specific approach, resting on Chimel’s dual justifications.

The court continued:

We have also recognized, however, that when the occupant of an automobile is arrested, the very circumstances that supply probable cause for the arrest may also give the police probable cause to believe that the vehicle contains contraband, evidence of the crime, a weapon or some means of escape. If so, a warrantless search of the vehicle is authorized, not as a search incident to arrest, but rather as a search falling within the automobile exception to the warrant requirement.

The automobile exception, it should be noted, is an exception only to the warrant requirement; it does not, in contrast to the search-incident-to-arrest exception, dispense with the requirement that there be probable cause to search the vehicle.\(^\text{256}\)

In its earlier opinion in People v. Langen,\(^\text{257}\) the New York Court of Appeals had stated that the employment of this automobile exception “requires both probable cause to search the automobile generally and a nexus between the probable cause to search and the crime for which the arrest is being made.”\(^\text{258}\)

\(^{255}\) Id. at 43 (citations omitted).

\(^{256}\) Id. (citations omitted).

\(^{257}\) 456 N.E.2d 1167 (N.Y. 1983).

\(^{258}\) Id. at 1173. In Langen, the search of a suitcase was permissible, since the defendant had been arrested for drug possession and the police had probable cause to believe that contraband related to the offense was located somewhere in the truck. Id.
Thus, in *Langen*, the court found that the facts constituting the crime which is the basis for the arrest must also have a relationship to the factual existence of probable cause, when the automobile exception is to be employed. Accordingly, in *Blasich*, the search of a gym bag upon probable cause was held to be permissible because the basis for an arrest for possession of burglar’s tools gave the officers probable cause to believe that the bag would contain further evidence of that crime.

In *People v. Galak*, the court stated that *Blaisch* had extended the required nexus beyond the “crime” for which there had been an arrest (*Langen’s* language), to the circumstances prompting the arrest. This nexus requirement has been described as designed to prevent a situation “where a long-dormant investigation of crimes unrelated to the arrest is proposed as a justification for a warrantless search following the arrest.” New York’s nexus approach may also have the effect, intended or not, of reducing the occurrence of pretextual arrests which are undertaken in the hope that evidence of wholly independent offenses might be discovered and that such evidence might in turn provide probable cause for a vehicular search.

IV. JURISDICTIONS ENDORSING BELTON

In those jurisdictions that have elected to adopt *Belton’s* approach as part of their state constitutional doctrine, the extent to which its benefits have been discussed has varied. Connecticut, Utah, South Dakota and Iowa have endorsed *Belton* without extensive elaboration, perhaps finding its virtues to be self-evident.

A. General Endorsements: Connecticut, Utah, South Dakota, and Iowa

In 1992, *State v. Waller* confirmed the Connecticut Supreme Court’s interpretation of article first, Section 7 of the state constitution as permitting a warrantless search of an automobile’s passenger compartment when the arrestee

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259 541 N.E.2d at 44. Although the defendant had not been placed under arrest for that offense, the existence of the basis for the arrest provided a sufficient predicate for the search. *Id.* at 44-45.


261 *Id.* at 844.

262 *Id.* at 845.

263 612 A.2d 1189 (Conn. 1992).

264 The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures; and no warrant to search any place, or to seize any person or things, shall issue without describing them as nearly as may be, nor without probable cause supported by oath or affirmation.

CONN. CONST. art. I, § 7.
is detained at the scene. The court rejected the defendant’s argument that his detention in a police car had removed the justification for the search. In 1981, in *State v. K.C.C.*, the Supreme Court of Utah tersely responded to an arrestee’s state constitutional objection to the search of a pickup cab with its approval of *Belton*. As recently as in 1997, the Utah Court of Appeals expressed its reluctance to explore a different approach in the absence of contrary precedent.

In *State v. Rice*, the Supreme Court of South Dakota applied the standard of reasonableness of Article VI, Section 11 of the state constitution in concluding that a search paralleling *Belton*’s scope was permissible. While the facts of *Rice* included a potential justification based upon the officer’s observation of a weapon, the court characterized the search as one incident to arrest and subsequent cases have regarded it as applying *Belton*’s rule. In *Rice*, an automobile passenger had been arrested pursuant to a bench warrant, after he had been asked to leave the car by the arresting officer. The officer saw him lay a set of nunchaku (a martial arts weapon consisting of two rods joined by a chain, cable or rope) on the passenger’s seat, and a search of the vehicle also revealed an unsheathed hunting knife and some beer. The glove compartment was then opened, revealing a small pipe and three baggies, two containing marijuana and one hashish. *Rice*, the driver, was then arrested for possession of a controlled substance. Examining the search of the glove compartment as in-

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265 612 A.2d at 1194.  
266 See id.  
268 Id. at 1046-47. Article I, Section 14 of the Utah Constitution provides:  

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized.  

270 327 N.W.2d 128 (S.D. 1982).  
271 The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause supported by affidavit, particularly describing the place to be searched and the person or thing to be seized.  

S. D. Const. art. VI, § 11.  
272 327 N.W.2d at 131.  
274 See *Rice*, 327 N.W.2d at 129.
incident to the lawful arrest of the passenger, the court noted that under Article VI, Section 11 the standard of reasonableness governed the analysis:

The officer’s search revealed, in addition to the already discovered nunchaku, an unsheathed hunting knife which the appellee was apparently trying to conceal under the floorboard. The search of the glove compartment which followed was a logical extension of the search since its contents were readily available to the occupants prior to their exiting from the vehicle. Applying the test of reasonableness under Article VI, § 11 of our state constitution to the facts of this case, we hold that the search of the appellee’s vehicle and the compartments therein was a search incident to arrest, which is permissible under the constitution of this state.275

Similarly, in 1981, the Supreme Court of Iowa stated in State v. Sanders276 that “we believe Belton strikes a reasonably fair balance between the rights of the individual and those of society. We adopt it . . . as our rule.”277 In Sanders, defendants had been stopped for a robbery involving a firearm pursuant to a police radio report describing their vehicle as the getaway car. They were ordered to leave the vehicle and a patdown search preceding the arrest revealed a knife and large rolls of money. The search of the car’s interior after the arrest produced a loaded pistol and rolls of coins.278 While briefly alluding to the potential applicability of the automobile exception to the case, the court stated that, with regard to searches incident to arrest, Belton had addressed continuing uncertainty concerning “on the one hand, . . . the extent of constitutional protection . . . [and] on the other, the scope of investigative authority.”279 In its view, the “delicate balancing”280 of Belton provided an appropriate approach under Article I, Section 8 of the Iowa Constitution.281

275 Id. at 131-32.
276 312 N.W.2d 534 (Iowa 1981).
277 Id. at 539.
278 Id. at 537.
279 Id. at 538.
280 Id.
281 See id. at 539. Article I, Section 8 of the Iowa Constitution reads as follows:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.
B. Changing Course: Ohio

Until April of 2002, the Supreme Court of Ohio had declined to follow Belton's approach under Section 14, Article 1 of the Ohio Constitution when the defendant had been arrested for a traffic violation. That approach, similar to New Jersey's, was established ten years ago in State v. Brown. In Brown, after the defendant was arrested for driving under the influence of alcohol and was placed in a patrol car, an officer searched his vehicle and opened an unlocked box which was in the glove compartment. The box contained seven sugar cubes laced with LSD. Brown was prosecuted for drug possession. The trial court suppressed the LSD, and the Court of Appeals affirmed. The Supreme Court agreed that the search violated the Ohio Constitution. The court noted that Belton had involved an arrest for the offense of possession of marijuana, and added that if it was intended to permit an automobile search solely because . . . one of its occupants [has been arrested] on any charge, we decline to adopt its rule. . . . We do not believe that the certainty generated by a bright-line test justifies a rule that automatically allows police officers to search every nook and cranny of an automobile just because the driver is arrested for a traffic violation.

The court also believed that the search was unreasonable under the Fourth Amendment.

In State v. Murrell, the court's earlier interpretation of Section 14, Article I was expressly reconsidered and overruled. Murrell had been stopped for exceeding a posted speed limit, and the officer's check of his license indi-

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282 The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the person and things to be seized.

283 See supra notes 177-203 and accompanying text.


285 Id.

286 Id. at 115.

287 Id. Curiously, the court stated that the search in Belton had also been supported by probable cause to search the vehicle for additional marijuana or evidence of its use. Id. As noted earlier, the U.S. Supreme Court did not address that issue. See supra note 24 and accompanying text.

288 Brown, 588 N.E.2d at 115.

289 764 N.E.2d 986 (Ohio 2002).
icated that an outstanding arrest warrant had been issued for Murrell's failure to pay child support. He was arrested, handcuffed, and placed in the back of a police car. The officer then conducted a search of the car, during which he opened a small cloth bag located on the floor in front of the driver's seat. The bag contained crack cocaine, and Murrell was prosecuted for its possession. At the suppression hearing, the officer testified that the traffic stop was routine, that he never perceived himself to be in danger, and that he would not have impounded the car had he not found the cocaine.

The trial court granted the motion to suppress, and the Court of Appeals reversed, upholding the search on the basis of Belton and distinguishing Brown on the ground that Murrell's arrest was for nonpayment of child support rather than a traffic violation. On appeal, the Supreme Court of Ohio noted that Brown's statement that the search had been violative of the Fourth Amendment had been erroneous. Consequently, it stated that the only rationale supporting the decision in Brown was its state constitutional analysis. Despite the earlier decision of the Court of Appeals to distinguish Brown, the Ohio Supreme Court chose to reconsider Brown's view of Section 14, Article I.

The court noted that Ohio's provision and the Fourth Amendment contain virtually identical language, and that consequently they had been interpreted as affording the same protection "unless there are persuasive reasons to find otherwise." The court noted that Brown had cited no authorities for its conclusion that Section 14, Article I was "more stringent" than the Fourth Amendment, and stated its belief that most jurisdictions had "chosen to fully embrace Belton's bright-line rule." The court observed that Belton is applicable only when a lawful custodial arrest, grounded in probable cause, has occurred, and that the circumstances of the arrest eased concerns about a lack of probable cause to conduct a search. It stated that "Belton does not authorize indiscriminate fishing expeditions," adding that its standard represented a

290 Id. at 987-88.
291Id. at 988.
292Id.
293Id.
294Id. at 990-91. The court observed that "the Belton court purposely determined to craft a bright-line rule of sufficient scope to encompass the facts of Brown, as well as those of the case sub judice." Id. at 990.
296Id.
297Id. (quoting State v. Robinette, 685 N.E.2d 762, 767 (Ohio 1997)).
298Id. at 991-92.
299Id. at 992.
300Id.
calculated conclusion by the Supreme Court that a bright-line rule presented advantages. The court added:

We find it significant that Justice Stewart, who wrote the majority opinion in Belton, also wrote the majority opinion in Chimel, which established strict limitations on the “search incident to arrest” exception, and which reversed the conviction at issue in that case as based on a search the Chimel court determined to be unreasonable. . . . Obviously, Justice Stewart and the other justices in the majority in Belton believed that the specific concerns at issue in that case justified extension of the Chimel rule to cases involving an arrest of the occupant of a motor vehicle. Both Chimel and Belton are seminal Fourth Amendment decisions that contribute to a comprehensive jurisprudence. . . .

The court stated that the same considerations that motivated the Supreme Court led it to conclude that Brown had failed to appreciate Belton's advantages or present persuasive reasons for departing from the principle that Section 14, Article I and the Fourth Amendment "should be harmonized whenever possible."

C. Other Extensive Discussion: Arkansas, Wisconsin, and Idaho

In Stout v. State, the Supreme Court of Arkansas has also explained that its endorsement of Belton's approach under Article 2, Section 15 of the Arkansas Constitution was consistent with its general policy of mirroring Fourth Amendment analysis when interpreting that provision. Stout had been stopped for crossing a highway's center line while he was driving his sister's hatchback station wagon. He was asked to leave the vehicle to perform some field sobriety tests, and when he was found to be sober he was issued a warning ticket. Stout had also explained that he was en route from Texas to Wisconsin

301 Murrell, 764 N.E.2d at 992.
302 Id. (citation omitted).
303 Id. at 992-93. Two justices dissented. See id. at 993 (Moyer, C.J., dissenting); see also id. at 996 (Pfeifer, J., dissenting).
304 898 S.W.2d 457 (Ark. 1995).
305 The right of the people of this State to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.
ARK. CONST. art. II, § 15.
306 Stout, 898 S.W.2d at 459.
after an extended visit, and as the officer saw no luggage or clothing in the hatchback he asked for permission to search the vehicle. Stout consented to an examination from the outside, and the officer saw what appeared to be a marijuana cigarette butt in plain view.\(^{307}\) He opened the door, smelled the cigarette, and confirmed that it was marijuana. Stout was placed under arrest and handcuffed, and he was asked to stand on the side of the highway. The officer then searched the hatchback area, raised the flap covering the spare tire compartment, and smelled a strong odor of marijuana.\(^{308}\) Inside the compartment he found a metal container holding 10.6 pounds of marijuana wrapped in several packages.\(^{309}\) Charged with possession of the drugs, Stout objected to the search on federal and state constitutional grounds.\(^{310}\)

The Arkansas Supreme Court noted that it had previously held that the hatchback area of an automobile qualifies as a portion of the passenger compartment under Belton, and that the search had been valid under the Fourth Amendment as incident to arrest.\(^{311}\) Turning to the state constitutional argument, it then noted, “Of course, we could hold that the Arkansas Constitution provides greater protection against unreasonable searches than does the Constitution of the United States, but we see no reason to do so.”\(^{312}\) It observed that the wording of each “is comparable, and through the years, in construing this part of the Arkansas Constitution, we have followed the Supreme Court cases.”\(^{313}\) Holding the search to be valid, it added:

> It seems especially appropriate to do so in this case because courts in the past had great difficulty in balancing the competing interests and, at the same time, setting out workable rules for search and seizure cases involving automobiles. . . . Belton has provided a practical and workable rule for fourteen years, and we have followed it on many occasions. Consequently, we choose to continue to interpret “unreasonable search” in Article 2, Section 15 of the Constitution of Arkansas in the same manner the Supreme Court interprets the Fourth Amendment to the Constitution of the United States.\(^{314}\)

\(^{307}\) Id.

\(^{308}\) Id. at 459-60.

\(^{309}\) Id. at 459.

\(^{310}\) Id. He also unsuccessfully raised an objection under the Arkansas Rules of Criminal Procedure. See id. at 460-61.

\(^{311}\) Id. at 460.

\(^{312}\) Id.

\(^{313}\) Id.

\(^{314}\) Id.; see also State v. Earl, 970 S.W.2d 789, 793 n.2 (Ark. 1998) (dictum).
The Wisconsin Supreme Court's explanation of a similar mirroring process has been accompanied by a more detailed discussion of the perceived strengths of Belton. In 1986, State v. Fry\(^\text{315}\) involved that court's explicit consideration of some of the practical consequences of the federal rule. Fry was arrested for trespass while standing outside of his recently-occupied car, and a search of the locked glove compartment had been justified as incident to the arrest.\(^\text{316}\) He was convicted for possession of the weapon discovered during the search, and argued that his lack of access to the vehicle precluded the search under Wisconsin's statutory requirements, as well as under state and federal constitutional standards.\(^\text{317}\) The court stated that Wisconsin's statute governing a search incident to arrest,\(^\text{318}\) enacted in 1969, was consistent with both Chimel's "immediate control" test\(^\text{319}\) and with Belton, which in the court's view merely constituted "an application of the Chimel test to a specific factual situation."\(^\text{320}\) Accordingly, as the search was authorized by Belton, it was also permissible under the statute.\(^\text{321}\) Turning to Fry's argument under the state constitution, the court then examined his claim that it "should reject Belton's conclusion that the interior of an automobile is within the immediate presence or control of a defendant who is not actually in the vehicle during the search."\(^\text{322}\)

The court noted that article I, section 11 of the Wisconsin Constitution is "virtually identical" to the Fourth Amendment,\(^\text{323}\) and that the court had "con-

\(^{315}\) 388 N.W.2d 565 (Wis. 1986).

\(^{316}\) Id. at 567-68.

\(^{317}\) Id. at 568.

\(^{318}\) WIS. STAT. § 968.11 (1969) stated:

Scope of search incident to lawful arrest. When a lawful arrest is made, a law enforcement officer may reasonably search the person arrested and an area within that person's immediate presence for the purpose of:

(1) Protecting the officer from attack;

(2) Preventing the person from escaping;

(3) Discovering and seizing the fruits of the crime; or

(4) Discovering and seizing any instruments, articles or things which may have been used in the commission of, or which may constitute evidence of, the offense.

\(^{319}\) Fry, 388 N.W.2d at 570.

\(^{320}\) Id. at 571.

\(^{321}\) Id. at 572.

\(^{322}\) Id. at 573.

\(^{323}\) Id. WIS. CONST. art. I, § 11 states:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and
sistantly and routinely" conformed state constitutional doctrine to that developed under the federal provision.\textsuperscript{324} This was the result of its decision both "to prevent the confusion caused by differing standards,"\textsuperscript{325} and to implement the intent of Wisconsin's framers.\textsuperscript{326} The court stated that it was "reluctant to construe [the] state constitutional provision differently than the fourth amendment, especially since the two provisions are intended to protect the same interests" and it was "unconvinced that the Supreme Court provides less protection than intended by the search and seizure provision of the Wisconsin Constitution."\textsuperscript{327}

\textit{Belton}'s bright-line rule did not constitute an approach which undermined the state constitutional protections of Wisconsin citizens.\textsuperscript{328} Instead, the rule was a simple and reasonable one.

A police officer may assume under \textit{Belton} that the interior of an automobile is within the reach of a defendant when the defendant is still at the scene of an arrest, but the defendant is not physically in the vehicle. We cannot say as a matter of fact in all cases that a defendant never could regain access to the interior of an automobile after initially leaving the vehicle. Thus we would seriously undermine police security if we adopted as a matter of constitutional fact the rule that the interior of an automobile never is within reach of a suspect who is outside the vehicle at the arrest scene . . . .\textsuperscript{329}

The alternative to \textit{Belton}'s approach, determining access on a case-by-case basis, was "unworkable . . . because such momentary escapes are not predictable."\textsuperscript{330} Lack of uniformity would also result from such an individualized approach.\textsuperscript{331} Consequently, \textit{Belton} was held to be an appropriate application of Wisconsin's search incident to arrest exception to the warrant requirement.\textsuperscript{332} Concluding its discussion, the court returned to the subject of conforming state search and seizure doctrine to that developed under the Fourth Amendment. It particularly describing the place to be searched and the persons or things to be seized.

\textsuperscript{324} Fry, 388 N.W.2d at 573.
\textsuperscript{325} Id. at 574.
\textsuperscript{326} Id.
\textsuperscript{327} Id.
\textsuperscript{328} Id.
\textsuperscript{329} Id.
\textsuperscript{330} Id.
\textsuperscript{331} Id. at 575.
\textsuperscript{332} Id.
added that its approach was "not only consistent with the text of Wisconsin's search and seizure provision, its constitutional history and its judicial history, but is also in accord with sound public policy." Fry's endorsement of Belton was recently reaffirmed in State v. Pallone.

In 1998, in State v. Charpentier, the Supreme Court of Idaho found Belton's approach to be appropriate under Article I, Section 17 of the Idaho Constitution "for the reasons set forth in Belton and additional considerations not articulated in that opinion." Charpentier was stopped for speeding, and the officer determined that her driver's license had been suspended and that her restricted license did not permit her to drive at that time. She was arrested for "driving without privileges" and was handcuffed and placed in a patrol car. The officer then returned to search her vehicle and discovered a small amount of marijuana, two plastic straws, and a small pouch containing a plastic bag in which straws and a yellow-white substance, later identified as methamphetamine, were found. Charpentier was arrested for possession of a controlled substance and moved to suppress the methamphetamine. The state relied upon the search as incident to her arrest. The trial court framed the issue as whether Article I, Section 17 permits a search of a vehicle's passenger compartment, including containers, as an incident of a traffic arrest "when a defendant, following a traffic stop, has been removed from a vehicle, handcuffed and placed in a patrol car . . . ." Holding that it did not, the trial court suppressed the evidence. Its decision was reversed by the Court of Appeals.

335 Id.


336 The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue without probable cause shown by affidavit, particularly describing the place to be searched and the person or thing to be seized.

IDAHO CONST. art. 1, § 11.
The Supreme Court of Idaho observed, as had the lower courts, that the search was permissible under *Belton*. It then discussed, as had the U.S. Supreme Court, the need for clarity on the matter. The court stated that "[i]t is unlikely that there is any area of activity that places the police and public in contact with one another on a recurring basis more than the operation of a motor vehicle." It added that arrests are certain to occur, and "there is a need for clear rules that give both the police and the public an understanding of what the police can and cannot do." It noted that *Belton*'s analysis had developed in response to these concerns, adding "[t]he disarray in results noted by the United States Supreme Court and the need for a clear rule understood by both the public and the police are compelling reasons to adopt the rule enunciated in *Belton* as the proper interpretation of Article I, § 17 of the Idaho Constitution." The court stated that there was nothing in Idaho’s history or jurisprudence that required a contrary result, and observed that the consistency of having the same law applicable under the state and federal constitutions "makes sense to the police and the public."

The court then went on to discuss other factors "worthy of note," although they had not been cited in *Belton*. It set forth its view of the diminished expectations of privacy connected with an automobile:

The use of the automobile on public roads is extensively regulated. Drivers must be licensed. The roadways belong to the public. There are insurance requirements for operators of automobiles. There are extensive safety requirements for automobiles. In some areas there are emission standards. Inspections are authorized for various purposes, and there are limitations on the window tinting that is allowed that would exclude vision into the vehicle. These rules do not address the issue of the search of an automobile directly. However, they are indicative of the fact that the automobile is not comparable to the home. The expectation of privacy within the automobile falls far short of that accorded the sanctuary of the home. The level of privacy due the automobile is satisfied by the requirement that there must be a lawful arrest of the occupant before a search of the contents may take place.

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344. *Id.* at 1036.
345. *Id.*
346. *Id.* at 1037.
347. *Id.*
348. *Id.*
The court also stated that it is important to know that when the arrest of an occupant of a car has been made, "the automobile can be left untended with the assurance that any weapons, evidence of crime or contraband have been removed from the reach of passersby or confederates in unlawful activity." The court concluded by emphasizing the clarity of its approach:

Under the rule adopted by this Court, the police know what they can do after they have made a lawful arrest. The public knows the extent of protection afforded from a search while utilizing the automobile. The automobile is not a haven for weapons, contraband or evidence of criminal activity once the threshold requirement that there be a lawful arrest has been reached. It is well that people know that and guide their conduct accordingly.

It described its rule as "straightforward, easily applied and predictably enforced."

V. CONCLUSION

As the opinions endorsing Belton illustrate, state constitutional decisionmaking in assessing the validity of a vehicular search incident to arrest has produced strong disagreement about the desirability of the federal approach. The cases have often reflected intensive analysis and a true diversity of views concerning the proper balancing of constitutionally protected privacy interests and the genuine needs of law enforcement.

Somewhat more surprisingly, however, there have been significant and often innovative differences in both the methodology by which competing goals have been reconciled and in the characterization of those personal interests at stake. The stark contrast between Washington's recognition of heightened expectations of privacy in locked containers and the Supreme Court of Idaho's discussion of diminished expectations of vehicular privacy is of course no accident. It is the logical outgrowth of the extent to which our state constitutions have truly come to reflect the variety of values among our states. It is also very striking that the settled nature of federal doctrine in this critical and much-discussed area, reflected in last year's Supreme Court oral argument in Thomas, has enhanced the prominence of state constitutional adjudication as a setting within which the merits of Belton may still be debated.

349 Charpentier, 962 P.2d at 1037. The court recognized that "[t]his is not always a concern, but it is a sufficient concern to address." Id.

350 Id.

351 Id.
It is also perhaps worth noting that the absence of a discernible, prevalent trend in this area may indicate that the modern development of diverse and independent state constitutional decision making is truly evolving. At about the same time that Belton was decided, Professor Ronald K. L. Collins wrote insightfully about the dangers of poorly-reasoned "reactionary" state constitutional analyses which respond to unpopular federal doctrine. His observations concerning the use of a state constitutional provision as merely a reactive instrument to be used in rejecting a specific federal approach are as true today as they were then:

An instrumentalist approach to decision making does not provide the necessary decisional framework in which to determine questions of consistence and uniformity. . . . Instead, a reactionary approach uses the state charter in a piecemeal fashion, whenever the occasion may arise – in the mind of judges – for purposes of philosophical disagreement or in order to insulate a controversial decision from the Supreme Court review. Seen in this light, the sovereign law of the state constitution becomes little more than a plaything.\(^{352}\)

State constitutional decisions which have considered, and at times rejected, the Belton doctrine have avoided the pitfalls of a poorly-reasoned, result-oriented approach to state constitutional law. Instead, the diversity of these analyses is a testament to the careful weighing of the relative values of bright-line rules for law enforcement, individual privacy, and police safety. It is predictable that such deeply-held diversity of viewpoint, sometimes so prominent in our federal system, will continue to flourish on this issue.
